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SECTION 11 MODEL CONTRACTS

11.1. DEVELOPMENT OF CONTRACTS TO BE SUBMITTED

The following instructions are provided to explain how the attached DDTP model contracts are structured and how they will be modified to develop mutually agreeable final contracts. Because no negotiations nor alterations of the contract are permitted subsequent to the time established for the receipt of the bids, it is imperative that bidders follow these instructions carefully in order to be fully responsive, from a contractual aspect, to the RFP. Bidders should note that these contract terms are based upon State of California model contract language, and that the State and the DDTP do not normally accept changes to this language. Therefore, any requested changes that might be approved by the DDTP and the CPUC are expected to be minor in nature and only serve to clarify rather than alter the intent of the provision.

11.1.1 Preparation of Proposed Contract Language

1. Detach the appropriate model contract from the RFP (either Exhibit 11A, 11B or 11C of this Section.) This document, properly annotated, will be returned to the DDTP for use in developing final contract language.
2. Make an appropriate entry in any portion of the contract which has a blank(). **Do not include any dollar figures or percentages related to bid costs.**
3. Prepare a cover letter of transmittal that identifies each change made to the model contract, and which explains (except where the reason for the change is obvious) the rationale for the change.
4. Make a copy of the annotated contract and retain for your files. This copy will be used during subsequent communications with the DDTP relative to the acceptability of the proposed contract.
5. Submit the cover letter and the annotated contract to the DDTP Procurement Officer listed in RFP Section 1.5. by the date contained in RFP Section 1.7. An early submission of the proposed contract will facilitate the review and approval process. If no changes are requested, simply submit the letter indicating that the model contract language is acceptable and that no changes are requested.

11.1.2. Contract Negotiation

1. Upon receipt of the proposed contract, the DDTP will examine the document to establish the acceptability of the proposed language. The bidder will be notified as to which portions, if any, of the language submitted are not acceptable. If necessary, meetings between the potential vendor and the DDTP will be arranged to resolve any differences. The DDTP may, following such meetings, request a revised contract reflecting changes agreed upon to be prepared and returned by the bidder.
2. Following the last date to approve contract language, the prospective bidder will be notified by the DDTP of any changes required which were agreed upon during contract negotiations and any proposed language that remains unacceptable to the DDTP.
3. Upon request, or at the DDTP's initiation, acceptable proposed contract language will be made available by the DDTP to all prospective bidders.

11.2. NETWORK SERVICES MODEL CONTRACT

Model contract language for bidders of CRS Network Services is contained in Exhibit 11A, attached.

11.3. CALL CENTER SERVICES MODEL CONTRACT

Model contract language for bidders of CRS Call Center Services is contained in Exhibit 11B, attached.

11.4. NETWORK MANAGEMENT SERVICES MODEL CONTRACT

Model contract language for bidders of CRS Network Management Services is contained in Exhibit 11C, attached.

NETWORK SERVICES AGREEMENT

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which _____, a _____ corporation (hereinafter called the Network Services Provider), will provide network services for a statewide telecommunications relay service known as the California Relay Service (hereinafter called CRS) through which hearing-impaired and speech-impaired persons are provided with access to the public telecommunications network in California functionally equivalent to that provided to other public telecommunications network customers. In accordance with California Code of Regulations, Title 20, Public Utilities Code § 2881, the CRS is under the authority of the California Public Utilities Commission (hereinafter called CPUC) and under the oversight of the CPUC's Deaf and Disabled Telecommunications Program Administrative Committee (hereinafter called DDTPAC) with advice provided by the California Relay Service Advisory Committee (hereinafter called CRSAC), and program administration provided by the Deaf and Disabled Telecommunications Program (hereinafter called DDTP.) Either prior to award or after, the California State Legislature and the CPUC may significantly alter the assignment of responsibilities regarding CRS and this contract from the DDTPAC, CRSAC and the DDTP, to other entities. Therefore, by order of the CPUC, the CPUC may at any time unilaterally reassign any or all of the responsibilities of the DDTPAC, CRSAC and the DDTP under this contract and its exhibits, including signature of the contract, to another entity, including but not limited to entities of the State of California.

2. TERM OF AGREEMENT

This Agreement is effective upon signing by the Network Services Provider and the DDTP and formal approval of the CPUC. Once effective, the Network Services Provider shall provide the services described in paragraph 4, Scope of Work, with the period of service supporting live CRS calls to be continuously provided for three years from the date of In-Service/Cutover stipulated in the DDTP CRS Request for Proposal (RFP) Section 1.7 item 23, or other date as mutually agreed upon by the Network Services provider and the DDTP. The DDTP shall have the option to further extend this Agreement and the service period for up to two one-year terms and one six-month term as further set forth in the RFP. These service terms shall remain in effect unless earlier terminated by the DDTP in accordance with the termination provisions contained in Paragraphs 25 and 26 herein.

If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. When appropriation is delayed, the Network Services Provider may, with the approval of the DDTP Contract Manager,

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1 continue to provide the services herein, however under such circumstances the
2 Network Services Provider shall do so at its own risk, and the obligation of the
3 DDTP to pay for such services shall be completely dependent upon the further
4 appropriation of applicable funds. If funds to effect such continued payment are not
5 appropriated, contractor agrees to take back any affected goods furnished under
6 this contract, terminate any services supplied to the DDTP under this contract, and
7 relieve the DDTP of any further obligation therefor.

3. CONTRACT AND PROJECT MANAGERS

The DDTP and the Network Services Provider shall each establish a Contract Manager assigned to this contract and may establish a Project Manager assigned to this project. If at anytime a Project Manager is not assigned, the responsibilities of the Project Manager shall revert to the Contract Manager. Assignment of the DDTP's Project Manager shall be via written notice from the DDTP's Executive Director to the Network Services Provider's Contract Manager, copied to the Network Services Provider's Project Manager. Assignment of the Network Services Provider's Project Manager shall be via written notice from the Network Services Provider's Contract Manager to the DDTP's Contract Manager, copied to the DDTP's Executive Director and Project Manager.

The Contract Manager for the Network Services Provider shall be

The Contract Manager for the DDTP shall be

The DDTP may change its Contract or Project Manager at any time upon written notice to the Network Services Provider's Contract Manager by the DDTP's Executive Director. The Network Services Provider's Contract Manager or Project Manager may be changed 14-days following the DDTP's receipt of a written notice addressed to the DDTP's Contract Manager and which specifically identifies the new Contract or Project Manager, his/her qualifications, and a transition plan. The Network Services Provider will provide its new Contract or Project Manager with a full working knowledge of the appropriate contract terms and commitments, the project's status, employed technologies and personnel, and shall ensure that the new Contract or Project Manager has familiarity with all aspects of the responsibilities he/she is about to assume.

All correspondence and transmittals of formal notifications concerning this Agreement shall be addressed to the Contract Managers unless otherwise stipulated herein. The assigned Contract and Project Managers shall handle all communications in a timely manner. All formal notices shall be deemed to be delivered five days after mailing by registered or certified mail, return receipt requested. A change of address shall be noticed in the same manner.

4. SCOPE OF WORK

The Network Services Contractor shall establish and operate toll-free services, outbound services with associated consumer billing, and all other services associated with the Network Services component of the California Relay Service as described in:

- a.) the DDTP's RFP (attached hereto as Exhibit A and hereinafter referred to as the RFP); and

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b.) the contractor's proposal in response to the RFP, including written responses to the DDTP's questions (attached hereto as Exhibit B and hereinafter referred to as Contractor's Proposal).

The Network Services Provider shall retain full control of its facilities. The Network Services Provider is solely responsible for the provision of those services described as Network Services in Exhibits A and B attached hereto and made a part of this Agreement.

To accomplish the objectives of the CPUC and the DDTP the Network Services Provider will coordinate and consult on an ongoing basis concerning network services provided per the terms and conditions of this Agreement.

5. COST CONTROL AND LIMITATION

The Network Services Provider shall establish a budget detail for the first year of their participation on this project and shall submit a copy to the DDTP for review and approval prior to finalizing this Agreement. The Network Services Provider shall submit a budget annually, within the time established by the DDTP, for the remainder of the term of this Agreement unless specifically exempted from doing so by the DDTP in writing.

6. SCHEDULING AND COMPLETION OF WORK

The Network Services Provider shall initiate the network services on a statewide basis not later than the time specified in Section 1, Key Action Dates for in-service/cutover, and as described in the DDTP's RFP, subject to the approval of this Agreement by the CPUC and with the specific authorization of the DDTP. The key action dates listed in RFP section 1.7. that follow the date listed for award and execution, including the in-service/cutover date for the beginning of handling live CRS calls under this contract, may be modified as stipulated in RFP Section 10.6.1. Such modification shall effectively change such dates listed in RFP section 1.7.

Time is of the essence of this Agreement and, accordingly, all time limits shall be strictly construed and strictly enforced. The Network Services Provider's failure to meet the in-service/ cutover deadline imposed hereunder, or any such renegotiated later in-service/cutover date, shall be considered a material and significant breach of this Agreement and shall entitle the DDTP to liquidated damages as set forth in Paragraph 30. Failure of the Network Services Provider to pass Acceptance Testing prior to the in-service date and a subsequent ordered delay by the DDTP until Acceptance Testing is passed or provisionally passed, shall not relieve the Network Services Provider of its liability for said liquidated damages. A start date ordered by the DDTP to be later than that specified in Section 1, Key Action Dates and for which the DDTP's order specifically states that the delay is no fault of the Network Services Provider shall not be subject to such liquidated damages.

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1 The Network Services Provider shall submit to the Project Manager of the DDTP a
2 detailed work plan including time lines consistent with the service start-up plan
3 included in the Network Services Provider's proposal and the RFP which details the
4 establishment and implementation of the statewide CRS and the associated time
5 frames. The Network Services Provider shall submit the work plan to the DDTP no
6 later than fourteen (14) calendar days from the date the CPUC approves this
7 Agreement.

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The DDTP shall review the Network Services Provider's work plan and authorize its implementation on a mutually agreed to service date. Approval by the DDTP Executive Director of the Network Services Provider's work plan shall in no way relieve or release the Network Services Provider from any other obligations to properly perform and complete their portion of the establishment, implementation, and operation of CRS in accordance with this Agreement.

The Network Services Provider agrees that a representative of said Network Services Provider will be available to meet with the DDTP and representatives of other CRS contractors for the purposes of scheduling CRS start-up and to address and resolve other issues and considerations pertaining to CRS. The representative will have the authority to commit the Network Services Provider.

7. COMPENSATION

The Network Services Provider shall be reimbursed for invoices submitted and approved by both the DDTP and the CPUC at the per minute rate for usage as described in Exhibit A (RFP Section 7.1) and defined and confirmed in Exhibit B (RFP Exhibit 7A). The DDTP will not compensate the Network Services Provider for any costs incurred for start up or termination except as expressly described herein.

8. INVOICES

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number.

For contracts in excess of \$50,000, in accordance with GC Section 16645 et. seq, every invoice shall include a certification that the contractor shall not use state funds to assist, promote, or deter union organizing during the life of the contract, including any extensions or renewals thereof.

9. REQUIRED PAYMENT DATE

Unless otherwise specified, payment will be made in accordance with Government Code Sections 927 et seq., as applicable. Payment shall not be due until the later of (a) the date of the performance of services supplied to the DDTP; or (b) receipt of an accurate invoice.

10. TAXES

Unless otherwise required by law, the DDTP is exempt from Federal excise taxes. The DDTP will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the DDTP pursuant to this contract.

11. EXAMINATION AND AUDIT

Network Services Provider agrees, by signing this contract, that the DDTP, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Network Services Provider agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Such records shall either be maintained within California, or the Network Services Provider shall pay the DDTP for its costs for travel at the State's rates and per diem allowances then in effect, for the DDTP or its representatives to examine and audit the records located outside of California. The Network Services Provider agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who in the sole opinion of the DDTP might have information related to such records. Further, Network Services Provider agrees to include a similar right of the DDTP to audit records and interview staff in any subcontract related to performance of the contract. Examination and audit shall be subject to reasonable access, identification, security, safety or other policies of the Provider, which shall not be employed to deny or delay access. During any interviews with personnel, a representative of the Provider may be in attendance.

12. PERFORMANCE MONITORING

The Network Services provider shall permit the DDTP and any other duly authorized agent or governmental agency to monitor all such activities conducted by the Network Services provider and its subcontractors pursuant to the terms of this Agreement. As the monitoring agency may at its sole discretion deem necessary or appropriate, such monitoring may consist of evaluation of internal operating and management procedures, examination of program data, special analyses, on-site checking, interviews with personnel, or any other reasonable procedure. On-site checking shall require 5 days advance notice, subject to reasonable access, identification, security, safety or other policies of the Provider which shall not be employed to deny or delay access. Examination and audit shall be subject to reasonable access, identification, security, safety or other policies of the Provider, which shall not be employed to deny or delay access. During any interviews with personnel, a representative of the Provider may be in attendance.

The DDTP may not monitor the relay of an actual conversation without the approval of both parties to the conversation, unless the parties are notified that the conversation may be monitored for quality assurance. The DDTP may arrange for calls to test the relayed communications, or other factors relating to full and equal access, without the permission of the Network Services Provider. Such calls will not be identified as test or monitoring calls.

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1 All monitoring shall be performed in a manner that will not unduly interfere with
2 the provision of services. However, since CRS is a 24 hour, 7 days a week service,
3 the monitoring may occur at any time. Duly authorized agents of the DDTP shall
4 have the right to make on-the-spot checks at any time without any warning. The
5 Network Services Provider shall make provisions to allow agents of the DDTP this
6 capability. Refusal of the Network Service Provider to facilitate performance
7 monitoring will be considered as a refusal to meet a performance requirement and,
8 as such, will result in liquidated damages as stipulated in Paragraph 30.

9 The fact that such monitoring is undertaken shall in no way relieve or release the
10 Network Services Provider from its obligation to properly perform its duties in
11 accordance with the Agreement nor from Network Services Provider's full
12 responsibility for damages or loss caused by Network Services Provider, its
13 subcontractors, employees or agents. The Network Services Providers obligations
14 referenced under this paragraph shall be continual and shall not be affected by
15 DDTP acceptance of invoices. DDTP shall not be required to request any changes
16 based on the monitoring undertaken pursuant to this Clause.

17 **13. PERFORMANCE BOND**

18 Faithful Performance bonds shall be furnished in the manner described in Section 5
19 of the RFP.

20 **14. SUBCONTRACTS**

21 For any subcontracts anticipated to equal 15% or more of the Network Services
22 Provider's reimbursement, the Network Services Provider shall submit any
23 proposed subcontracts to the DDTP for its written approval before entering into the
24 same. No such work shall be subcontracted without the prior approval of the DDTP
25 Project Manager. For purposes of this Agreement, any subcontractors identified in
26 the Network Services Provider's response to this RFP are considered approved, with
27 the exception that the DDTP shall be free to examine, at its request, the contract
28 between the Network Services Provider and its subcontractor. Upon the
29 termination of any such subcontract, the DDTP Project Manager shall be notified
30 immediately.

31 **15. RELATIONSHIP WITH CONTRACTOR AND SUBCONTRACTOR**

32 The Network Services Provider shall be responsible for all actions of its
33 subcontractors and all payment to its subcontractors. Failure of a subcontractor to
34 perform for any reason shall not relieve the Network Services Provider of the
35 responsibility for competent and timely performance of all duties under this
36 Agreement. The DDTP will not deal with subcontractors except through the

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1 Network Services Provider's Project Manager. All agreements with subcontractors
2 shall provide that the subcontractor's sole remedy for non-payment by the Network
3 Services Provider under subcontracts shall be against the Network Services
4 Provider, and not result in liens or claims of any sort against the DDTP.

5 All requests for changes of work within this Agreement shall be in writing between
6 the Project Manager for the DDTP and the Project Manager for the Network
7 Services Provider.

8 **16. ASSIGNMENT**

9 Except for the subcontractors identified in the Network Services Provider's
10 Proposal, the Network Services Provider may not transfer by assignment, novation
11 or subcontract its obligation to perform under this Agreement or any part thereof,
12 unless the prior written approval of the Executive Director of the DDTP as to each
13 assignment or subcontract has been acquired.

14 The Network Services Provider may not, without prior written consent of the
15 DDTP's Executive Director, assign any right that it may have under this
16 Agreement. Consent may be given or withheld at the sole discretion of the DDTP,
17 provided that such assignment is expressly made subject to all defenses, setoffs or
18 counter claims which would be available to the DDTP against the Network Services
19 Provider in the absence of such assignment. For the purpose of this paragraph, the
20 DDTP will not unreasonably prohibit the Provider from freely assigning its right to
21 payment, provided that the Provider remains responsible for its obligations
22 hereunder.

23 The DDTP's consent to one or more assignment(s) or subcontractors hereunder shall
24 not constitute a waiver or diminution of the DDTP's absolute right to consent to
25 each and every subsequent assignment or subcontractor.

26 In the event of any subcontract hereunder to which the DDTP has consented, each
27 such subcontract shall contain a provision that further assignments shall not be
28 made to any third or subsequent tier subcontractor without the additional written
29 consent of the DDTP.

30 The DDTP's rights and obligations, in whole or in part, to this Agreement may be
31 assigned by order of the California Public Utilities Commission to any other entity.

32 **17. INSURANCE COVERAGE**

33 When performing work under this contract on DDTP property in the care, custody
34 or control of the DDTP, or on the property of other providers in the CRS

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deployment, the Network Services Provider shall provide insurance coverage for itself and all of its employees used in connection with performance of services under this Agreement, and insure that all subcontractors shall be similarly covered. Such policies shall be issued by a financially sound carrier and/or carriers and shall be subject to the reasonable approval of the DDTP. Copies of certificates of insurance naming the DDTP as an additional insured shall be provided to the DDTP. Such insurance coverage shall hold the DDTP harmless from all claims of bodily injury, including death, and property damage, including loss of use, by Network Services Provider, its employees, agents or subcontractors and their employees. This insurance will include Workers Compensation as required by law applicable to the Provider; comprehensive general liability and bodily injury insurance in amounts that are commercially reasonable under the given circumstances.

18. REGULATORY AUTHORITY

The Network Services Provider assumes responsibility for compliance with all regulatory requirements of the CPUC, as well as all other applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the DDTP and the State against any loss, cost damage or liability by reason of the contractor's violation of this provision.

19. CONFLICT OF INTEREST

The Network Services Provider warrants that neither it nor its subsidiaries are currently engaged in any relationship which could result in a conflict of interest in the performance of this Agreement. The Network Services Provider further agrees to refrain from entering into any such relationship, and to notify the Contract Manager of the DDTP promptly of any potential conflict of interest for itself or its subcontractors. The DDTP may exercise its option to terminate this Agreement if a conflict is found.

20. COVENANT AGAINST GRATUITIES

The Network Services Provider warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Network Services Provider, or any agent or representative of the Network Services Provider, to any officer or employee of the DDTP with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the DDTP shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the DDTP in procuring on the open market any items that Network Services Provider agreed to supply, or services to perform, shall be borne and paid for by the Network Services Provider. The rights and remedies of

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the DDTP provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

21. INCORPORATION OF REPRESENTATIONS AND WARRANTIES; FURTHER REPRESENTATIONS AND WARRANTIES

This Agreement expressly incorporates the Network Services Provider's representations, certifications and warranties in Exhibits A and B and in other provisions of this Agreement.

The Network Services Provider further represents and warrants:

- a.) The Network Services Provider is a corporation duly organized, validly existing in good standing under the laws of the State of _____. The Network Services Provider has all necessary power and authority under applicable corporate law and its organizational documents to carry on the business as it is described herein.
- b.) The Network Services Provider's has full corporate power and authority to execute, deliver and perform this Agreement. The execution and delivery of this Agreement and performance under this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Network Services Provider. This Agreement has been duly executed and delivered and attested to by duly authorized officers of the Network Services Provider and is a valid and binding agreement, enforceable against the Network Services Provider in accordance with its terms.
- c.) The Network Services Provider warrants that it has full power and authority to grant the rights herein granted and will hold the DDTP harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Provider avers that it will not enter into any arrangement with any third party which might abridge any rights of the DDTP under this Agreement.

22. OWNERSHIP OF THE CRS TOLL-FREE NUMBERS

The DDTP shall retain ownership of all of its current and future CRS 800 (or other toll-free) numbers that will be assigned to the Network Services Provider's network that will be used in fulfilling this contract. Any correlation of retained records

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identifying users of the toll-free CRS services shall be treated by the Provider with the strictest attention to confidentiality.

23. DISPUTES

a.) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Network Services Provider shall submit to the DDTP Contract Manager a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this contract, unless the DDTP, on its own initiative, has already rendered such a final decision. Network Services Provider's written demand shall be fully supported by factual information. If such demand involves a cost adjustment to the contract, Network Services Provider shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which the Network Services Provider believes the DDTP is liable. The Contract Manager shall provide a written decision on the merits of the appeal within 30-days, unless the issue requires a decision by the DDTPAC, CRSAC or the CPUC, which shall also be communicated in writing to the Provider. If the Provider does not receive notice of the decision (or the submission of the issue to the DDTPAC, CRSAC or the CPUC) the Provider may assume that there was an adverse decision. If the Network Services Provider is not satisfied with the decision of the DDTP's Contract Manager, the Network Services Provider may appeal the decision to the DDTP's Executive Director.

b.) Pending the final resolution of any dispute arising under, related to, or involving this contract, the Network Services Provider agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the DDTP's instructions. Network Services Provider's failure to diligently proceed in accordance with the DDTP's instructions shall be considered a material breach of this contract.

c.) Any final decision of the DDTP shall be expressly identified as such, shall be in writing, and shall be signed by the DDTP's Executive Director. If the DDTP fails to render a decision within 90 days after receipt of the Network Services Provider's demand, it shall be deemed a final decision adverse to the Network Services Provider's contentions. The DDTP's final decision shall be conclusive and binding regarding the dispute unless the Network Services Provider commences an action in a court of

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competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

- d.) The parties may request binding arbitration under the rules of the American Arbitration Association, as set out in California Contract Code, within the stipulated timeframe. The DDTP shall have the right to accept or reject a request to enter into binding arbitration. Any dispute resolution action filed shall be in a location convenient to the Executive Management of the DDTP.

24. STOP WORK

- a.) The DDTP may, at any time, by written Stop Work Order to the Network Services Provider, require the Network Services Provider to stop all, or any part, of the work called for by this contract for a period of up to 90 days after the Stop Work Order is delivered to the Network Services Provider, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of a Stop Work Order, the Network Services Provider shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Network Services Provider, or within any extension of that period to which the parties shall have agreed, the DDTP shall either:
 - i.) Cancel the Stop Work Order, or
 - ii.) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b.) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Network Services Provider shall resume work. The DDTP shall make an equitable adjustment in the contract price, and the contract shall be modified, in writing, accordingly, if:
 - i.) The Stop Work Order results in an increase in the time required for, or in the Network Services Provider's cost properly allocable to the performance of any part of this contract; and
 - ii.) The Network Services Provider asserts its right to an equitable adjustment within 30 days after the end of the period of work

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stoppage; provided, that if the DDTP decides the facts justify the action, the DDTP may receive and act upon a proposal submitted at any time before final payment under this contract.

c.) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the DDTP, the DDTP shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

d.) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated for default, the DDTP may allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.

e.) The DDTP shall not be liable to the Network Services Provider for loss of profits because of a Stop Work Order.

25. TERMINATION FOR THE CONVENIENCE OF THE DDTP

a.) The DDTP may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the DDTP or the CPUC determines that a termination is in the DDTP's interest. Termination shall be implemented by delivering to the Network Services Provider a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.

b.) After receipt of a Notice of Termination, and except as directed by the CPUC, the Network Services Provider shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Network Services Provider shall:

i.) Stop work as specified in the Notice of Termination.

ii.) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

iii.) Terminate all subcontracts to the extent they relate to the work terminated.

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- iv.) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontract; the approval or ratification of which will be final for purposes of this clause.

26. TERMINATION FOR DEFAULT

- a.) The DDTP may, subject to the Force Majeure paragraph contained herein, by written notice of default to the Network Services Provider, terminate this contract in whole or in part if the Network Services Provider fails to:
- i.) Perform services within the time specified in the contract or any amendment thereto;
 - ii.) Make progress, so as to endanger performance of this contract (but see paragraph (b) below); or
 - iii.) Perform any of the other provisions of this contract (but see subparagraph (b) below).
- b.) The DDTP's right to terminate this contract under subparagraphs ii and iii above, may be exercised if the Network Services Provider does not cure such failure. From receipt of written notification by the DDTP of such a failure, the cure timeframe shall be one day if the reported issues are service effecting to more than 10% of any one CRS service, 14-days if the reported issues are service effecting to less than 10% of any one CRS service, 30-days if issues are occasional, sporadic or not service effecting, or the time frame stated in the cure notice issued by the DDTP, whichever term is longer. The timeframe issued in the DDTP's notice may be longer if the issues are deemed by the Contract Manager not to be crucial to management or significantly service effecting. Based on the communications between the Provider and the DDTP during the cure period, the DDTP may extend the timeframe without losing any of its rights under this agreement. The DDTP's Contract Manager shall issue a written release to the Provider as soon as an acceptable resolution to the issue of concern is achieved.
- c.) If the DDTP terminates this contract in whole or in part, it may acquire, under the terms and in the manner the DDTP considers appropriate, goods or services similar to those terminated, and the Network Services Provider will be liable to the DDTP for any excess costs for those services. However, the Network Services Provider shall continue the work not terminated.

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- 1 d.) If the contract is terminated for default, the DDTP may require the
2 Network Services Provider to sequester and protect, as directed by the
3 DDTP, any property in its possession in which the DDTP has an interest.
- 4 e.) The DDTP shall pay contract price for completed services delivered and
5 accepted. The Network Services Provider and DDTP shall agree on the
6 amount of payment for services performed and accepted. Failure to agree
7 will be a dispute under the Disputes clause. The DDTP may withhold
8 any sum the DDTP determines to be necessary to protect the DDTP
9 against loss because of outstanding liens or claims of former lien holders.
- 10 f.) If, after termination, it is determined that the Network Services Provider
11 was not in default, or that the default was excusable, the rights and
12 obligations of the parties shall be the same as if the termination had been
13 issued for the convenience of the DDTP.
- 14 g.) The rights and remedies of the DDTP in this clause are in addition to any
15 other rights and remedies provided by law or under this contract.

27. FORCE MAJEURE

17 Neither the DDTP nor the Network Services Provider shall be considered in default
18 in the performance of its obligations under this Agreement to the extent that the
19 performance of such obligations is prevented or delayed by any cause beyond the
20 reasonable control of the affected party which such party could not, by due
21 diligence, have avoided. Such causes, including but not limited to, acts of God or
22 the public enemy, acts of governmental authority in either sovereign or contractual
23 capacity, floods, explosions and riots, shall not relieve the affected party of liability
24 in the event of its failure to use diligence to remedy the situation and remove the
25 cause in an adequate manner and with all reasonable dispatch and to give notice
26 and full particulars of the same in writing to the other parties as soon as possible
27 after the occurrence of the cause that prevented or delayed performance of
28 obligations.

28. RIGHTS AND REMEDIES OF DDTP FOR DEFAULT

- 30 a.) In the event any goods furnished or services provided by the Network
31 Services Provider in the performance of this Agreement should fail to
32 conform to the requirements herein, or to the RFP response submitted by
33 the Network Services Provider, the DDTP may reject the same and it
34 shall become the duty of the Network Services Provider to correct the
35 performance of service(s) provided, without expense to the DDTP.

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b.) In addition to any other rights and remedies the DDTP may have, the DDTP may require the Network Services Provider, at the Network Services Provider's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Network Services Provider.

c.) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the Network Services Provider, any loss or damage sustained by the DDTP in procuring any items or services which the Network Services Provider agreed to supply shall be born by the Network Services Provider.

d.) The DDTP reserves the right to offset the reasonable cost of all damages caused to the DDTP against any outstanding invoices or amounts owed to Network Services Provider or to make a claim against the Network Services Provider therefore.

29. NETWORK SERVICES PROVIDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

a.) The Network Services Provider shall be liable for damages arising out of injury to the person and/or damage to the property of the DDTP, its employees, persons designated by the DDTP for training, or any other persons other than agents or employees of the Network Services Provider, designated by the DDTP for any purpose, prior to, during, or subsequent to commencement of the provision of services, provided that the injury or damage was caused by the fault or negligence of the Network Services Provider.

b.) Network Services Provider shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Network Services Provider, or for damage to alteration or attachments that may result from the normal operation and maintenance of the goods provided by the Network Services Provider during the contract.

30. LIQUIDATED DAMAGES FOR FAILURE TO MEET PERFORMANCE REQUIREMENTS

The parties acknowledge that in the event of a failure by the Network Services Provider to meet the performance requirements listed in the RFP (Exhibit A), damage shall be sustained by the DDTP and that it is and will be impractical and extremely difficult to ascertain and determine the actual damages which the DDTP will sustain in the event of and by reason of such failure; and the Network Services

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Provider therefore agrees that it will pay the DDTP, at the DDTP's sole discretion, liquidated damages as stipulated herein.

- a.) Liquidated damages may be assessed at \$1,000.00 per day for each incident after implementation, where the Network Services Provider is either:
 - i.) unable to accept incoming CRS calls for a continuous period of 15 minutes or more (through no fault of the Local Exchange Companies [LECs] or the CCS providers), or
 - ii.) unable to deliver incoming CRS calls to any CCS provider for a continuous period of 15 minutes or more (through no fault of the LECs or CCS providers), or
 - iii.) unable to accept outgoing CRS calls from CCS providers for a continuous period of 15 minutes or more (through no fault of the LECs or CCS providers), or
 - iv.) unable to deliver outgoing CRS calls received from the CCS providers for a continuous period of 15 minutes or more (through no fault of the LECs or CCS providers).
- b.) Liquidated damages may also be assessed for failure to meet the in-service/cutover date deadline imposed under this Agreement as stipulated in Paragraph 6 for consumer access to CRS, up to \$10,000 per day.
- c.) Notwithstanding paragraphs a.) and b.) above, the maximum liquidated damages that may be assessed shall be \$10,000 per day (24 hour period beginning at 12:00 midnight Pacific Time.

The sole purpose of liquidated damages is to assure adherence to the performance requirements of the Agreement. Payment of liquidated damages does not relieve the NS vendor of its obligation to perform under this contract. The liquidated damages set forth herein have been agreed upon by the parties as a reasonable estimate of damages. No punitive intention is inherent. Written notification of each failure to meet a performance requirement will be given by the DDTP to the Network Services Provider.

31. COLLECTION OF DAMAGES (ACTUAL AND LIQUIDATED)

Amounts due the DDTP as actual or liquidated damages may be deducted by the DDTP from any money payable to the Network Services Provider pursuant to the Agreement or otherwise as a debt due the DDTP. The DDTP shall notify the

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1 Network Services Provider in writing of any claim for actual or liquidated damages
2 pursuant to this provision at least ten (10) calendar days prior to the date the
3 DDTP deducts such sums from money payable to the Network Services Provider.

4 **32. SEVERABILITY**

5 The Network Services Provider and the DDTP agree that if any provision of this
6 contract is found to be illegal or unenforceable, such term or provision shall be
7 deemed stricken and the remainder of the contract shall remain in full force and
8 effect. Either party having knowledge of such term or provision shall promptly
9 inform the other of the presumed non-applicability of such provision.

10 **33. COMPLETE INTEGRATION**

11 This Contract, including the Request for Proposal and the Network Services
12 Provider's response are intended to be a complete integration and there are no prior
13 or contemporaneous different or additional agreements pertaining to the subject
14 matter of the contract.

15 **34. INDEPENDENT CONTRACTOR**

16 The Network Services Provider and its agents and employees shall in the
17 performance of this contract, act in an independent capacity and not as officers or
18 employees or agents of the DDTP.

19 **35. CONFIDENTIALITY OF DATA**

20 All financial, statistical, personal, technical and other data and information relating
21 to the DDTP's operation and the California Relay Service's (including the content of
22 calls made via the CRS, and CRS caller preference, profile or 711 information) or
23 which are made available to the Network Services Provider in order to carry out
24 this contract, or which become available to the Network Services Provider in
25 carrying out this contract, shall be protected by the Network Services Provider from
26 unauthorized use and disclosure through the observance of the same or more
27 effective procedural requirements as are applicable to the DDTP. The identification
28 of all such confidential data and information as well as the DDTP's procedural
29 requirements for protection of such data and information from unauthorized use
30 and disclosure shall be provided by the DDTP in writing to the Network Services
31 Provider. If the methods and procedures employed by the Network Services
32 Provider for the protection of the Network Services Provider's data and information
33 are deemed by the DDTP to be adequate for the protection of the DDTP's
34 confidential information, such methods and procedures may be used, with the
35 written consent of the DDTP, to carry out the intent of this paragraph. The

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Network Services Provider shall not be required, under the provisions of this paragraph, to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Network Services Provider's possession, is independently developed by the Network Services Provider outside the scope of this contract, or is rightfully obtained from third parties.

36. NEWS RELEASES

Unless otherwise exempted, news releases pertaining to the award of this contract shall not be made without prior written approval of the DDTP.

37. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY

- a.) The Network Services Provider shall hold the DDTP, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.
- b.) The Network Services Provider may be required to furnish a bond to the DDTP against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c.) Network Services Provider, at its own expense, shall defend any action brought against the DDTP to the extent that such action is based upon a claim that the goods or software used by the Network Services Provider to provide its services or the operation of such goods pursuant to a current version of Network Services Provider supplied operating software infringes a United States patent or copyright or violates a trade secret. The Network Services Provider shall pay those costs and damages finally awarded against the DDTP in any such action. Such defense and payments shall be conditioned on the following:
 - i.) That the Network Services Provider shall be notified within a reasonable time in writing by the DDTP of any notice of such claim; and
 - ii.) That the Network Services Provider shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the DDTP shall have the option to participate in such action at its own expense.

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1 d.) Should the goods or software, or the operation thereof, become, or in the
2 Network Services Provider's opinion is likely to become, the subject of a
3 claim of infringement of a United States patent or copyright or a trade
4 secret, the DDTP shall permit the Network Services Provider at its
5 option and expense either to procure the right to continue using the goods
6 or software, or to replace or modify the same so that they become non-
7 infringing. If none of these options can reasonably be taken, or if the use
8 of such goods or software in the provision of services shall be prevented
9 by injunction, the Network Services Provider agrees to make every
10 reasonable effort procure substitute goods or software. If, in the sole
11 opinion of the DDTP, the return of such infringing goods or software
12 makes the continued provision of services under this Agreement
13 impractical, the DDTP shall then have the option of terminating this
14 Agreement, or applicable portions thereof.

15 e.) The contractor shall have no liability to the DDTP under any provision of
16 this clause with respect to any claim of patent, copyright or trade secret
17 infringement which is based upon:

- 18 i) The combination or utilization of goods furnished hereunder with
19 equipment or devices not made or furnished by the contractor; or,
- 20 ii) The operation of equipment furnished by the contractor
21 under the control of any operating software other than, or in addition
22 to, the current version of contractor-supplied operating software; or
- 23 iii) The modification by the DDTP of the equipment furnished hereunder
24 or of the software; or
- 25 iv) The combination or utilization of software furnished hereunder with
26 non-contractor supplied software.

27 f.) Network Services Provider certifies that it has appropriate systems and
28 controls in place to ensure that DDTP allocated funds will not be used in
29 the performance of this Agreement for the acquisition, operation or
30 maintenance of computer software in violation of copyright laws.

31 g.) The foregoing states the entire liability of the contractor to the DDTP
32 with respect to infringement of patents, copyrights or trade secrets.

33 38. HEADINGS

34 The headings used in this Agreement are for the convenience of reference only and
35 not intended, to any extent for any purpose, to limit or define the text of any
36 paragraph herein.

39. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California as applied to contracts formed and wholly performed in California, and enforced in and by the courts in the State of California.

40. NONDISCRIMINATION CLAUSE

- a.) During the performance of this contract, the Network Services Provider and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Network Services Provider and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Network Services Provider and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. The Network Services Provider and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b.) The Network Services Provider shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

41. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Network Services Provider swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Network Services Provider within the immediately preceding two-year period because of the Network Services Provider's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code (PCC) Section 10296.

42. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a.) In submitting a bid to the DDTP, the supplier offers and agrees that if the bid is accepted, it will assign to the DDTP all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the DDTP pursuant to the solicitation. Such assignment shall be made and become effective at the time the DDTP tenders final payment to the supplier.
- b.) If the DDTP receives, either through judgement or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the DDTP any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the DDTP as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c.) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose, and
 - i.) the assignee has not been injured thereby, or
 - ii.) the assignee declines to file a court action for the cause of action.

43. DRUG-FREE WORKPLACE CERTIFICATION

The Network Services Provider certifies under penalty of perjury under the laws of the State of California that the Network Services Provider will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a.) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violation, as required by Government Code Sections 8335(a).

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b.) Establish a Drug-Free Awareness Program as required by Government Code Section 8335(b) to inform employees about all of the following:

- i.) the dangers of drug abuse in the workplace;
- ii.) the person's or organization's policy of maintaining a drug-free workplace;
- iii.) any available counseling, rehabilitation and employee assistance programs; and,
- iv.) penalties that may be imposed upon employees for drug abuse violations.

c.) Provide, as required by Government Code Section 8335(c), that every employee who works on the proposed or resulting contract:

- i.) will receive a copy of the company's drug-free policy statement; and,
- ii.) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

44. FORCED, CONVICT, INDENTURED AND CHILD LABOR

In accordance with PCC Section 6108, Network Services Provider warrants that no foreign-made equipment, materials, or supplies used pursuant to this contract are produced in whole or in part by or with the benefit of forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

45. RECYCLING

Network Services Provider hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered or produced used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

46. CHILD SUPPORT COMPLIANCE ACT

The Network Services Provider acknowledges in accordance with PCC Section 7110, that:

- a.) The Network Services Provider recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance

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with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

b.) The Network Services Provider, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

47. AMERICANS WITH DISABILITIES ACT

Network Services Provider assures the DDTP that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (USC 12101 et seq.)

48. WAIVER

Waiver, whether formal or constructive, by DDTP of strict performance of any provision of this Agreement in any specific instance shall not be deemed a waiver of, nor shall it prejudice DDTP's right to require strict performance of, the same provision or any other provision in the future. The rights and remedies of the DDTP herein are cumulative and are in addition to any other rights or remedies that the DDTP may have in law or equity.

49. TAXES, FEES AND LICENSES

All sales, property, excise and other federal, state and local taxes, licenses or fees, if any, resulting from this Agreement shall be paid by the Network Services Provider.

50. MODIFICATIONS TO AGREEMENT

The DDTP may request, at its sole discretion and by written notice, that certain changes be made to the general scope of work without invalidating this Agreement. No changes in the scope of work shall be made by the Network Services Provider without the prior written approval of the Executive Director of the DDTP and the authorized representative of the Provider, notwithstanding orders directed by judicial authority, the Federal Communications Commission or the California Public Utilities Commission. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

Upon receipt of any such written request from the Executive Director of the DDTP for a change to the general scope of work, the Network Services Provider at Network Services Provider's expense shall within a reasonable time thereafter, submit to the DDTP a detailed written price and schedule adjustment to this

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Agreement. The Network Services Provider shall not begin such work prior to DDTP approval of the modification and associated costs. Nothing stated in this section prohibits the Provider from submitting requests for changes to the DDTP Contract Manager, the acceptance or rejection of such an offer shall be at the discretion of the DDTP and subject to approval by the CPUC.

This Agreement and all obligations hereunder are subject to all applicable laws, rules, obligations and orders or rulings of any authorized court, agency or commission of federal or California government. This Agreement is subject to changes or modifications that may from time to time be directed by the Federal Communications Commission or the State of California. Any such changes or modifications shall be subject to the procedure set forth in this Agreement.

51. CONFLICTING DOCUMENTS

To the extent, if any, that this Agreement conflicts with the RFP and/or Network Services Provider's proposal, this Agreement shall take precedence and control. To the extent, if any, that the RFP and the Network Services Provider's proposal conflict, the RFP shall take precedence and control.

52. SAFETY AND ACCIDENT PREVENTION

In performing work under this contract on DDTP or State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the DDTP may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

53. PRIORITY HIRING CONSIDERATIONS

If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

54. YEAR 2000 COMPLIANCE

Contractor warrants that it will provide only Year 2000 compliant products and/or services to the State in all present and future contracts and that Year 2000 compliant products and/or services meet the following requirements:

- a) For information technology goods and/or services, the contractor warrants and represents that the hardware, software and firmware goods and services

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delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date data with it. This warranty and representation is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.

b) For non-information technology goods, the contractor warrants and represents that the goods delivered under this contract are "Year 2000 compliant". For purposes of this contract, a good is Year 2000 compliant if it will continue to function fully before, at and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate and otherwise utilize date information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the contractor.

c) Resellers must obtain written confirmation from the manufacturer that the goods and/or services are Year 2000 compliant, as defined above.

55. INDEMNIFICATION

Provider agrees to indemnify, defend and save harmless the DDTP, the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

56. WARRANTY

Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in

Exhibit 11A, Network Services Model Contract

1 materials and workmanship and to the extent not manufactured pursuant to
2 detailed designs furnished by the State, free from defects in design. The
3 DDTP's approval of designs or specifications furnished by contractor shall not
4 relieve the contractor of its obligations under this warranty.

- 5 b) All warranties, including special warranties specified elsewhere herein, shall
6 inure to the DDTP, its successors, assigns, customer agencies and users of
7 the goods or services.

8 **57. ENTIRE AGREEMENT; COUNTERPARTS**

9 This Agreement, incorporating Exhibits A and B, constitutes the entire Agreement
10 between the parties. No other Agreement, statement, or promise relating to the
11 subject matter of this Agreement which is contained herein shall be valid or
12 binding. No changes, alternatives or modifications hereto shall be effective unless
13 in writing and signed by a representative of each party authorized to bind said
14 party. This Agreement may be executed in several counterparts, each of which will
15 be deemed an original and all of which shall constitute one and the same
16 instrument.

Exhibit 11A, Network Services Model Contract

1 **58. SIGNATURES**

2 Executed this _____ day of _____,
3 2002.

4 For the Deaf and Disabled Telecommunica- For the Network Services
5 Provider:
6 tions Program:

7 _____

8 _____

9 _____

10 _____

CALL CENTER SERVICES AGREEMENT

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which _____, a _____ corporation (hereinafter called the Call Center Service Provider), will provide call center services for a state-wide telecommunications relay service known as the California Relay Service (hereinafter called CRS). The CRS is a service through which hearing-impaired and speech-impaired persons are provided with access to the public telecommunications network in California functionally equivalent to that provided to other public telecommunications network customers. In accordance with California Code of Regulations, Title 20, Public Utilities Code § 2881, the CRS is under the authority of the California Public Utilities Commission (hereinafter called CPUC) and under the oversight of the CPUC's Deaf and Disabled Telecommunications Program Administrative Committee (hereinafter called DDTPAC) with advice provided by the California Relay Service Advisory Committee (hereinafter called CRSAC), and program administration provided by the Deaf and Disabled Telecommunications Program (hereinafter called DDTP.) Either prior to award or after, the California State Legislature and the CPUC may significantly alter the assignment of responsibilities regarding CRS and this contract from the DDTPAC, CRSAC and the DDTP, to other entities. Therefore, by order of the CPUC, the CPUC may at any time unilaterally reassign any or all of the responsibilities of the DDTPAC, CRSAC and the DDTP under this contract and its exhibits, including signature of the contract, to another entity, including but not limited to entities of the State of California.

2. TERM OF AGREEMENT

This Agreement is effective upon signing by the Call Center Services Provider and the DDTP and formal approval of the CPUC. Once effective, the Call Center Services Provider shall provide the services described in paragraph 4, Scope of Work, with the period of service supporting live CRS calls to be continuously provided for three years from the date of In-Service/Cutover stipulated in the DDTP CRS Request for Proposal (RFP) Section 1.7 item 23, or other date as mutually agreed upon by the Call Center Services provider and the DDTP. The DDTP shall have the option to further extend this Agreement and the service period for up to two one-year terms and one six-month term as further set forth in the RFP. These service terms shall remain in effect unless earlier terminated by the DDTP in accordance with the termination provisions contained in Paragraphs 24 and 25 herein.

If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. When appropriation is delayed, the Call

Exhibit 11B, Call Center Services Model Contract

1 Center Services Provider may, with the approval of the DDTP Contract Manager,
2 continue to provide the services herein, however under such circumstances the Call
3 Center Services Provider shall do so at its own risk, and the obligation of the DDTP
4 to pay for such services shall be completely dependent upon the further
5 appropriation of applicable funds. If funds to effect such continued payment are not
6 appropriated, contractor agrees to take back any affected goods furnished under
7 this contract, terminate any services supplied to the DDTP under this contract, and
8 relieve the DDTP of any further obligation therefor.

3. CONTRACT AND PROJECT MANAGERS

The DDTP and the Call Center Services Provider shall each establish a Contract Manager assigned to this contract and may establish a Project Manager assigned to this project. If at anytime a Project Manager is not assigned, the responsibilities of the Project Manager shall revert to the Contract Manager. Assignment of the DDTP's Project Manager shall be via written notice from the DDTP's Executive Director to the Call Center Services Provider's Contract Manager, copied to the Call Center Services Provider's Project Manager. Assignment of the Call Center Services Provider's Project Manager shall be via written notice from the Call Center Services Provider's Contract Manager to the DDTP's Contract Manager, copied to the DDTP's Executive Director and Project Manager.

The Contract Manager for the Call Center Services Provider shall be

The Contract Manager for the DDTP shall be

The DDTP may change its Contract or Project Manager at any time upon written notice to the Call Center Services Provider's Contract Manager by the DDTP's Executive Director. The Call Center Services Provider's Contract Manager or Project Manager may be changed 14-days following the DDTP's receipt of a written notice addressed to the DDTP's Contract Manager and which specifically identifies the new Contract or Project Manager, his/her qualifications, and a transition plan. The Call Center Services Provider will provide its new Contract or Project Manager with a full working knowledge of the appropriate contract terms and commitments, the project's status, employed technologies and personnel, and shall ensure that the new Contract or Project Manager has familiarity with all aspects of the responsibilities he/she is about to assume.

All correspondence and transmittals of formal notifications concerning this Agreement shall be addressed to the Contract Managers unless otherwise stipulated herein. The assigned Contract and Project Managers shall handle all communications in a timely manner. All formal notices shall be deemed to be delivered five days after mailing by registered or certified mail, return receipt requested. A change of address shall be noticed in the same manner.

Exhibit 11B, Call Center Services Model Contract

4. SCOPE OF WORK

The Call Center Services Provider shall provide all those services associated with the Call Center Services component of the California Relay Service as described in:

- a.) the DDTP's RFP (attached hereto as Exhibit A and hereinafter referred to as the RFP); and

Exhibit 11B, Call Center Services Model Contract

b.) the contractor's proposal in response to the RFP, including written responses to the DDTP's questions (attached hereto as Exhibit B and hereinafter referred to as Contractor's Proposal).

The Call Center Service Provider shall retain full control of its facilities. The Call Center Service Provider is solely responsible for the provision of those services described as Call Center Services in Exhibits A and B attached hereto and made a part of this Agreement.

To accomplish the objectives of the CPUC and the DDTP the Call Center Service Provider will coordinate and consult on an ongoing basis concerning the call center services provided under the terms and conditions of this Agreement.

5. SCHEDULING AND COMPLETION OF WORK

The Call Center Services Provider shall initiate the call center services on a statewide basis not later than the time specified in Section 1, Key Action Dates for in-service/cutover, and as described in the DDTP's RFP, subject to the approval of this Agreement by the CPUC and with the specific authorization of the DDTP. The key action dates listed in RFP section 1.7. that follow the date listed for award and execution, including the in-service/cutover date for the beginning of handling live CRS calls under this contract, may be modified as stipulated in RFP Section 10.6.1. Such modification shall effectively change such dates listed in RFP section 1.7.

Time is of the essence of this Agreement and, accordingly, all time limits shall be strictly construed and strictly enforced. The Call Center Services Provider's failure to meet the in-service/cutover deadline imposed hereunder, or any such renegotiated later in-service/cutover date, shall be considered a material and significant breach of this Agreement and shall entitle the DDTP to liquidated damages as set forth in Paragraph 29. Failure of the Call Center Services Provider to pass Acceptance Testing prior to the in-service date and a subsequent ordered delay by the DDTP until Acceptance Testing is passed or provisionally passed, shall not relieve the Call Center Services Provider of its liability for said liquidated damages. A start date ordered by the DDTP to be later than that specified in Section 1, Key Action Dates and for which the DDTP's order specifically states that the delay is no fault of the Call Center Services Provider shall not be subject to such liquidated damages.

The Call Center Service Provider shall submit, to the Project Manager of the DDTP, a detailed work plan, including time lines, consistent with the service start-up plan included in the Call Center Service Provider's proposal and the RFP which details the establishment and implementation of the statewide CRS and the associated time frames. The Call Center Service Provider shall submit the work plan to the DDTP no later than fourteen (14) calendar days from the date the CPUC approves this Agreement.

Exhibit 11B, Call Center Services Model Contract

1 The DDTP shall review the Call Center Service Provider's work plan and authorize
2 its implementation on a mutually agreed to service date. Approval by the DDTP
3 Executive Director of the Call Center Service Provider's work plan shall in no way
4 relieve or release the Call Center Service Provider from any other obligations to
5 properly perform and complete their portion of the establishment, implementation,
6 and operation of CRS in accordance with this Agreement.

Exhibit 11B, Call Center Services Model Contract

The Call Center Service Provider agrees that a representative of said Call Center Service Provider shall be available to meet with the DDTP and representatives of other CRS contractors for the purposes of scheduling CRS start-up and to address and resolve other issues and considerations pertaining to CRS. The representative will have the authority to commit the Call Center Service Provider.

6. COMPENSATION

The Call Center Service Provider shall be reimbursed at rate calculated as detailed in RFP Section 7.2 and as further bid by the contractor in RFP Exhibit 7C in its response to the DDTP's RFP and which are attached and made a part of this Agreement. The DDTP will not compensate the Call Center Service Provider for any costs incurred for start up or termination.

7. INVOICES

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

For contracts in excess of \$50,000, in accordance with GC Section 16645 et. seq, every invoice shall include a certification that the contractor shall not use state funds to assist, promote, or deter union organizing during the life of the contract, including any extensions or renewals thereof.

8. REQUIRED PAYMENT DATE

Unless otherwise specified, payment will be made in accordance with Government Code Sections 927 et seq., as applicable. Payment shall not be due until the later of (a) the date of the performance of services supplied to the DDTP; or (b) receipt of an accurate invoice.

9. TAXES

Unless otherwise required by law, the DDTP is exempt from Federal excise taxes. The DDTP will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the DDTP pursuant to this contract.

10. EXAMINATION AND AUDIT

The Call Center Service Provider agrees, by signing this contract, that the DDTP, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. The Call Center Service Provider agrees to maintain such records for possible audit for a

Exhibit 11B, Call Center Services Model Contract

1 minimum of three (3) years after final payment, unless a longer period of record
2 retention is stipulated. Such records shall either be maintained within California,
3 or the Call Center Services Provider shall pay the DDTP for its costs for travel at
4 the State's rates and per diem allowances then in effect, for the DDTP or its
5 representatives to examine and audit the records located outside of California. The
6 Call Center Service Provider agrees to allow the auditor(s) access to such records
7 during normal business hours and to allow interviews of any employees or others
8 who in the sole opinion of the DDTP might have information related to such records.
9 Further, the Call Center Service Provider agrees to include a similar right of the
10 DDTP to audit records and interview staff in any subcontract related to the
11 performance of the contract. Examination and audit shall be subject to reasonable
12 access, identification, security, safety or other policies of the Provider, which shall
13 not be employed to deny or delay access. During any interviews with personnel, a
14 representative of the Provider may be in attendance.

15 11. PERFORMANCE MONITORING

16 The Call Center Service provider shall permit the DDTP and any other duly
17 authorized agent or governmental agency to monitor all such activities conducted by
18 the Call Center Service provider and its subcontractors pursuant to the terms of
19 this Agreement. As the monitoring agency may at its sole discretion deem
20 necessary or appropriate, such monitoring may consist of evaluation of internal
21 operating and management procedures, training materials, examination of program
22 data, special analyses, on-site checking, interviews of personnel, or any other
23 reasonable procedure, subject to reasonable access, identification, security, safety or
24 other policies of the Provider which shall not be employed to deny or delay access.
25 During any interviews with personnel, a representative of the Provider may be in
26 attendance.

27 All monitoring shall be performed in a manner that will not unduly interfere with
28 the provision of services. Duly authorized agents of the DDTP shall have the right
29 to make on-the-spot or on-site checks at any time without any warning. The Call
30 Center Service Provider shall make provisions to allow agents of the DDTP this
31 capability.

32 The DDTP may not monitor the relay of an actual conversation without the
33 approval of both parties to the conversation, unless the parties are notified that the
34 conversation may be monitored for quality assurance. The DDTP may arrange for
35 calls to test the relayed communications, or may perform other tests to measure
36 factors relating to the Provider's performance, without the permission of the
37 Provider. Such calls or tests will not be identified as monitoring calls or tests.

Exhibit 11B, Call Center Services Model Contract

The fact that such monitoring is undertaken shall in no way relieve or release the Call Center Service Provider from its obligation to properly perform its duties in accordance with the Agreement nor from Call Center Service Provider's full responsibility for damages or loss caused by the Call Center Service Provider, its subcontractors, employees or agents. The Call Center Service Providers obligations referenced under this paragraph shall be continual and shall not be affected by DDTP acceptance of invoices. The DDTP shall not be required to request any changes based on the monitoring undertaken pursuant to this Clause. Refusal of the Call Center Services Provider to permit performance monitoring under the terms of this agreement will be considered an inability to meet a performance requirement. As such, the DDTP may assess liquidated damages as stipulated in Paragraph 29.

12. PERFORMANCE BOND

Faithful Performance bonds shall be furnished in the manner described in Section 5 of the RFP.

13. SUBCONTRACTS

The Call Center Service Provider shall submit any proposed subcontracts anticipated to equal 15% or more of the Call Center Service Provider's reimbursement to the DDTP for its written approval before entering into same. No work shall be subcontracted without the prior approval of the DDTP Project Manager. For purposes of this Agreement, any subcontractors identified in the Call Center Service Provider's response to this RFP are considered approved, with the exception that the DDTP shall be free to examine, at its request, the contract between the Call Center Service Provider and its subcontractor. Upon the termination of any such subcontract, the DDTP Project Manager shall be notified immediately. These conditions are performance requirements.

14. RELATIONSHIP WITH CONTRACTOR AND SUBCONTRACTOR

The Call Center Service Provider shall be responsible for all actions of its subcontractors and all payment to its subcontractors. Failure of a subcontractor to perform for any reason shall not relieve the Call Center Service Provider of the responsibility for competent and timely performance of all duties under this Agreement. The DDTP will not deal with subcontractors except through the Call Center Service Provider's Project Manager. All agreements with the subcontractors shall provide that the subcontractor's sole remedy for non-payment by the Call Center Service Provider under subcontracts shall be against the Call Center Service Provider, and not result in liens or claims of any sort against the DDTP.

Exhibit 11B, Call Center Services Model Contract

1 All requests for changes of work within this Agreement shall be in writing between
2 the Project Manager for the DDTP and the Project Manager for the Call Center
3 Service Provider.

4 **15. ASSIGNMENT**

5 Except for the subcontractors identified in the Call Center Service Provider's
6 Proposal, the Call Center Service Provider may not transfer by assignment,
7 novation or subcontract its obligation to perform under this Agreement or any part
8 thereof, unless the prior written approval of the Executive Director of the DDTP as
9 to each assignment or subcontract has been acquired.

10 The Call Center Service Provider may not, without prior written consent of the
11 DDTP's Executive Director, assign any right that it may have under this
12 Agreement. Consent may be given or withheld at the sole discretion of the DDTP,
13 provided that such assignment is expressly made subject to all defenses, setoffs or
14 counter claims which would be available to the DDTP against the Call Center
15 Service Provider in the absence of such assignment. For the purpose of this
16 paragraph, the DDTP will not unreasonably prohibit the Provider from freely
17 assigning its right to payment, provided that the Provider remains responsible for
18 its obligations hereunder.

19 The DDTP's consent to one or more assignment(s) or subcontractors hereunder shall
20 not constitute a waiver or diminution of the DDTP's absolute right to consent to
21 each and every subsequent assignment or subcontractor.

22 In the event of any subcontract hereunder to which the DDTP has consented, each
23 such subcontract shall contain a provision that further assignments shall not be
24 made to any third or subsequent tier subcontractor without the additional written
25 consent of the DDTP.

26 The DDTP's rights and obligations, in whole or in part, to this Agreement may be
27 assigned by order of the California Public Utilities Commission to any other entity.

28 **16. INSURANCE COVERAGE**

29 When performing work under this contract on DDTP property in the care, custody
30 or control of the DDTP, or on the property of other providers in the CRS
31 deployment, the Call Center Service Provider shall provide insurance coverage for
32 itself and all of its employees used in connection with the performance of services
33 under this Agreement, and insure that all subcontractors shall be similarly covered.
34 Such policies shall be issued by a financially sound carrier and/or carriers and shall
35 be subject to the reasonable approval of the DDTP. Copies of certificates of

Exhibit 11B, Call Center Services Model Contract

1 insurance naming the DDTP as an additional insured shall be provided to the
2 DDTP. Such insurance coverage shall hold the DDTP harmless from all claims of
3 bodily injury, including death, and property damage, including loss of use by Call
4 Center Service Provider, its employees, agents or subcontractors and their
5 employees. This insurance will include Workers Compensation as required by law
6 applicable to the Provider; comprehensive general liability and bodily injury
7 insurance in amounts that are commercially reasonable under the given
8 circumstances.

9 17. REGULATORY AUTHORITY

10 The Call Center Services Provider assumes responsibility for compliance with all
11 regulatory requirements of the CPUC, as well as all other applicable statutes, rules,
12 regulations and orders of the United States and the State of California and agrees
13 to indemnify the DDTP and the State against any loss, cost damage or liability by
14 reason of the contractor's violation of this provision.

15 18. CONFLICT OF INTEREST

16 The Call Center Service Provider warrants that neither it nor its subsidiaries are
17 currently engaged in any relationship which could result in a conflict of interest in
18 the performance of this Agreement. The Call Center Service Provider further
19 agrees to refrain from entering into any such relationship, and to notify the
20 Contract Manager of the DDTP promptly of any potential conflict of interest for
21 itself or its subcontractors. The DDTP may exercise its option to terminate this
22 Agreement if a conflict is found.

23 19. COVENANT AGAINST GRATUITIES

24 The Call Center Service Provider warrants that no gratuities (in the form of
25 entertainment, gifts, or otherwise) were offered or given by the Call Center Service
26 Provider, or any agent or representative of the Call Center Service Provider, to any
27 officer or employee of the DDTP with a view toward securing the contract or
28 securing favorable treatment with respect to any determinations concerning the
29 performance of the contract. For breach or violation of this warranty, the DDTP
30 shall have the right to terminate the contract, either in whole or in part, and any
31 loss or damage sustained by the DDTP in procuring on the open market any items
32 that the Call Center Service Provider agreed to supply, or services to perform, shall
33 be borne and paid for by the Call Center Service Provider. The rights and remedies
34 of the DDTP provided in this clause shall not be exclusive and are in addition to any
35 other rights and remedies provided by law or in equity.

**20. INCORPORATION OF REPRESENTATIONS AND WARRANTIES;
FURTHER REPRESENTATIONS AND WARRANTIES**

This Agreement expressly incorporates the Call Center Service Provider's representations, certifications and warranties in Exhibits A and B and in other provisions of this Agreement.

The Call Center Service Provider further represents and warrants:

- a) The Call Center Service Provider is a corporation duly organized, validly existing in good standing under the laws of the State of _____. The Call Center Service Provider has all necessary power and authority under applicable corporate law and its organizational documents to carry on the business as it is described herein.
- b) The Call Center Service Provider has full corporate power and authority to execute, deliver and perform this Agreement. The execution and delivery of this Agreement and performance under this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Call Center Service Provider. This Agreement has been duly executed and delivered and attested to by duly authorized officers of the Call Center Service Provider and is a valid and binding agreement, enforceable against the Call Center Service Provider in accordance with its terms.
- c.) The Call Center Services Provider warrants that it has full power and authority to grant the rights herein granted and will hold the DDTP harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Provider avers that it will not enter into any arrangement with any third party which might abridge any rights of the DDTP under this Agreement.

21. RIGHTS IN DATA, 711 DATABASE

The DDTP shall retain unabridged rights to use all current and acquired CRS personal user data resident in its 711 database, regardless of whether the data was supplied by the CCS Provider and whether or not such data was marked as proprietary, including as Customer Proprietary Network Information (CPNI), when furnished by the CCS Provider. The use by the DDTP of the customer 711 data shall not be diminished or limited by the CCS Provider in any manner. The ability of the CCS Provider to access the DDTP's 711 data shall not in-and-of-itself grant

Exhibit 11B, Call Center Services Model Contract

the CCS Provider proprietary rights to the data. The DDTP may, at its sole discretion, supply its 711 data to other parties for the sole purposes of routing CRS calls; establishing, confirming or changing the data; and summary reporting of the data. Such assignment shall not reduce the rights of the DDTP regarding said data. The CCS Provider shall, within 24 hours of receipt from the customer, provide to the DDTP or its assigned party as directed by the DDTP, the CRS customer data appropriate to the DDTP's 711 database that it has or will receive at any time from the date of contract signature by both parties to the date of contract termination. The CCS Provider, the DDP and its assignee(s) shall treat all 711 data as confidential under clause 34.

22. DISPUTES

- a.) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Call Center Service Provider shall submit to the DDTP Contract Manager a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this contract, unless the DDTP, on its own initiative, has already rendered such a final decision. The Call Center Service Provider's written demand shall be fully supported by factual information. If such demand involves a cost adjustment to the contract, Call Center Service Provider shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which the Call Center Service Provider believes the DDTP is liable. The Contract Manager shall provide a written decision on the merits of the appeal within 30-days, unless the issue requires a decision by the DDTPAC, CRSAC or the CPUC, which shall also be communicated in writing to the Provider. If the Provider does not receive notice of the decision (or the submission of the issue to the DDTPAC, CRSAC or the CPUC) the Provider may assume that there was an adverse decision. If the Call Center Service Provider is not satisfied with the decision of the DDTP's Contract Manager, the Call Center Service Provider may appeal the decision to the DDTP's Executive Director.
- b.) Pending the final resolution of any dispute arising under, related to, or involving this contract, the Call Center Service Provider agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the DDTP's instructions. Call Center Service Provider's failure to diligently proceed

Exhibit 11B, Call Center Services Model Contract

in accordance with the DDTP's instructions shall be considered a material breach of this contract.

- c.) Any final decision of the DDTP shall be expressly identified as such, shall be in writing, and shall be signed by the DDTP's Executive Director. If the DDTP fails to render a decision within 90 days after receipt of the Call Center Service Provider's demand, it shall be deemed a final decision adverse to the Call Center Service Provider's contentions. The DDTP's final decision shall be conclusive and binding regarding the dispute unless the Call Center Service Provider commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d.) The parties may request binding arbitration under the rules of the American Arbitration Association, as set out in California Contract Code, within the stipulated timeframe. The DDTP shall have the right to accept or reject a request to enter into binding arbitration. Any dispute resolution action filed shall be in a location convenient to the Executive Management of the DDTP.

23. STOP WORK

- a.) The DDTP may, at any time, by written Stop Work Order to the Call Center Service Provider, require the Call Center Service Provider to stop all, or any part, of the work called for by this contract for a period of up to 180 days after the Stop Work Order is delivered to the Call Center Service Provider, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of a Stop Work Order, the Call Center Service Provider shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 180 days after a Stop Work Order is delivered to the Call Center Service Provider, or within any extension of that period to which the parties shall have agreed, the DDTP shall either:
 - i.) Cancel the Stop Work Order
 - ii.) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.

Exhibit 11B, Call Center Services Model Contract

- b.) If a Stop Work Order issued under this clause is cancelled or the period of the Stop Work Order or any extension thereof expires, the Call Center Service Provider shall resume work. The DDTP shall make an equitable adjustment in the contract price, and the contract shall be modified, in writing, accordingly, if
- i.) The Stop Work Order results in an increase in the time required for, or in the Call Center Service Provider's cost properly allocable to the performance of any part of this contract; and
- ii.) The Call Center Service Provider asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the DDTP decides the facts justify the action, the DDTP may receive and act upon a proposal submitted at any time before final payment under this contract.
- c.) If a Stop Work Order is not cancelled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the DDTP, the DDTP shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d.) If a Stop Work Order is not cancelled and the work covered by the Stop Work Order is terminated for default, the DDTP may allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.
- e.) The Stop Work Order may include provisions that direct the CCS Provider to provide specific treatment of its CRS toll-free numbers (including its customer service numbers) and CRS web URLs and IP addresses during the period of the Stop Work Order. Such treatment may include, but shall not be limited to, forwarding the CRS calls to numbers, URLs or addresses specified by the DDTP, and/or providing recorded messages in the relay modality intended for the toll-free number or address.
- f.) The DDTP shall not be liable to the Call Center Service Provider for loss of profits because of a Stop Work Order.

24. TERMINATION FOR CONVENIENCE

The DDTP or the CCS Contractor may terminate this contract for convenience only under the following conditions:

Exhibit 11B, Call Center Services Model Contract

a.) TERMINATION FOR THE CONVENIENCE OF THE DDTP:

i.) The DDTP may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the DDTP or the CPUC determines that a termination is in the DDTP's or the public's interest. Termination shall be implemented by delivering to the Call Center Service Provider a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.

ii.) After receipt of a Notice of Termination, and except as directed by the CPUC, the Call Center Service Provider shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Call Center Service Provider shall:

A.) Stop work as specified in the Notice of Termination. The Notice of Termination may include provisions that direct the CCS Provider to provide specific treatment of its CRS toll-free numbers (including its customer service numbers) and CRS web URLs and IP addresses. Such treatment may include, but shall not be limited to, assigning the CCS Provider's CRS toll-free numbers to the DDTP, forwarding the CRS calls to numbers, URLs or addresses specified by the DDTP, and/or providing recorded messages in the relay modality intended for the toll-free number or address.

B.) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

C.) Terminate all subcontracts to the extent they relate to the work terminated.

D.) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontract; the approval or ratification of which shall be final for purposes of this clause.

iii.) If this Agreement is terminated for the convenience of the DDTP at any time during the first twelve months of service (after the

Exhibit 11B, Call Center Services Model Contract

Call Center Services Provider's actual complete in-service/cutover date), the DDTP shall pay the Call Center Services Provider ten percent (10.0%) of its projected monthly CRS revenues from the DDTP from this contract during that portion of the twelve months that remains after the effective date of the termination. The projected revenues shall be based solely on the flat monthly average of the previous three-month's income from the DDTP for regular CRS services (i.e., not inclusive of any other claims), and not inclusive of any revenues derived or forecast from other sources such as NECA even though such non-DDTP revenue may be dependent upon CRS traffic or services provided for and governed under this Agreement.

b.) TERMINATION FOR THE CONVENIENCE OF THE CCS CONTRACTOR:

- i.) The CCS Contractor may only terminate performance of work in whole under this contract for its convenience if it has received ten percent or less of the total CRS CCS traffic for three consecutive calendar months. Termination shall be implemented by delivering to the DDTP Contract Manager a Notice of Termination. The Notice of Termination must be provided to the DDTP Contract Manager within 30 days of the end of the three-month period. The Notice of Termination must specify a termination effective date of not less than 90 days from the date of delivery of the notice. Requests for termination effective less than 90 days from date of delivery of the notice may be granted at the sole discretion of the DDTP.
- ii.) After receipt of a Notice of Termination, the DDTP Contract Manager shall:
 - A.) Notify the DDTP and all other CRS vendors that a Notice of Termination has been received.
 - B.) Confirm whether or not the CCS call volumes were ten percent or less of the total CRS CCS call volumes for the preceding three calendar month period. Such confirmation shall be made not later than the 15th of the month if the notice was received by the 10th of the month, or not later than the 15th of the following month if the notice was received after the 10th of the month. Confirmation shall be in writing to the CCS vendor. If confirmation by the DDTP conflicts with the claims of the CCS

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Contractor, the Notice of Termination shall be suspended until the conflict can be resolved, and the Contractor shall continue to provide service until resolution is agreed upon by the Contractor and the DDTP.

iii.) Upon delivery of its Notice of Termination, the CCS Contractor shall:

A.) Stop work on the termination date specified in the Notice of Termination unless disputed as indicated in paragraph ii.B. above, or at an earlier date as determined by the DDTP as indicated in paragraph i. above, or at another date mutually agreed upon by the CCS Contractor and the DDTP.

B.) Conduct media advertising and other outreach to its CRS customers and the CRS community of users as directed by the DDTP or the CPUC.

C.) Provide specific treatment of its CRS toll-free numbers (including its customer service numbers) and CRS web URLs and IP addresses, as directed by the DDTP or the CPUC. Such treatment may include, but shall not be limited to, assigning the CCS Provider's CRS toll-free numbers to the DDTP, forwarding the CRS calls to numbers, URLs or addresses specified by the DDTP, and/or providing recorded messages in the relay modality intended for the toll-free number or address.

25. TERMINATION FOR DEFAULT

a.) The DDTP may, subject to the Force Majeure paragraph contained herein, by written notice of default to the Call Center Service Provider, terminate this contract in whole or in part if the Call Center Service Provider fails to:

i.) Perform services within the time specified in the contract or any amendment thereto;

ii.) Make progress, so as to endanger performance of this contract (but see paragraph (b) below); or

iii.) Perform any of the other provisions of this contract (but see subparagraph (b) below).

b.) The DDTP's right to terminate this contract under subparagraphs ii and iii above, may be exercised if the Call Center Service Provider does not cure such failure. From receipt of written notification by the DDTP of such a failure, the cure timeframe shall be 7-days if the reported issues

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are service effecting, 30-days if issues are occasional, sporadic or not service effecting, or the time frame stated in the cure notice issued by the DDTP, whichever term is longer. The timeframe issued in the DDTP's notice may be longer if the issues are deemed by the Contract Manager not to be crucial to management or significantly service effecting. Based on the communications between the Provider and the DDTP during the cure period, the DDTP may extend the timeframe without losing any of its rights under this agreement. The DDTP's Contract Manager shall issue a written release to the Provider as soon as an acceptable resolution to the issue of concern is achieved.

- c.) If the DDTP terminates this contract in whole or in part, it may acquire, under the terms and in the manner the DDTP considers appropriate, goods or services similar to those terminated, and the Call Center Service Provider will be liable to the DDTP for any excess costs for those services. However, the Call Center Service Provider shall continue the work not terminated.
- d.) If the contract is terminated for default, the DDTP may require the Call Center Service Provider to sequester and protect, as directed by the DDTP, any property in its possession in which the DDTP has an interest.
- e.) The DDTP shall pay contract price for completed services delivered and accepted. The Call Center Service Provider and DDTP shall agree on the amount of payment for services performed and accepted. Failure to agree will be a dispute under the Disputes clause. The DDTP may withhold any sum the DDTP determines to be necessary to protect the DDTP against loss because of outstanding liens or claims of former lien holders.
- f.) If the contract is terminated for default, the DDTP may require the Call Center Service Provider to conduct media advertising and other outreach to its CRS customers and the CRS community of users as directed by the DDTP or the CPUC.
- g.) If the contract is terminated for default, the DDTP may require the Call Center Service Provider to provide specific treatment of its CRS toll-free numbers (including its customer service numbers) and CRS web URLs and IP addresses. Such treatment may include, but shall not be limited to, assigning the CCS Provider's CRS toll-free numbers to the DDTP, forwarding the CRS calls to numbers, URLs or addresses specified by the DDTP, and/or providing recorded messages in the relay modality intended for the toll-free number or address.

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h.) If, after termination, it is determined that the Call Center Service Provider was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the DDTP.

g.) The rights and remedies of the DDTP in this clause are in addition to any other rights and remedies provided by law or under this contract.

26. FORCE MAJEURE

Neither the DDTP nor the Call Center Service Provider shall be considered in default in the performance of its obligations under this Agreement to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party which such party could not, by due diligence, have avoided. Such causes, including but not limited to, acts of God or the public enemy, acts of governmental authority in either sovereign or contractual capacity, floods, explosions and riots, shall not relieve the affected party of liability in the event of its failure to use diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch and to give notice and full particulars of the same in writing to the other parties as soon as possible after the occurrence of the cause that prevented or delayed performance of obligations.

27. RIGHTS AND REMEDIES OF DDTP FOR DEFAULT

a.) In the event any goods furnished or services provided by the Call Center Service Provider in the performance of this Agreement should fail to conform to the requirements herein, or to the RFP response submitted by the Call Center Service Provider, the DDTP may reject the same and it shall become the duty of the Call Center Service Provider to correct the performance of service(s) provided, without expense to the DDTP.

b.) In addition to any other rights and remedies the DDTP may have, the DDTP may require the Call Center Service Provider, at the Call Center Service Provider's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Call Center Service Provider.

c.) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the Call Center Service Provider, any loss or damage sustained by the DDTP in procuring any items or services which the Call Center Service Provider agreed to supply shall be born by the Call Center Service Provider.

- d.) The DDTP reserves the right to offset the reasonable cost of all damages caused to the DDTP against any outstanding invoices or amounts owed to Call Center Service Provider or to make a claim against the Call Center Service Provider therefore.

28. CALL CENTER SERVICE PROVIDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a.) The Call Center Service Provider shall be liable for damages arising out of injury to the person and/or damage to the property of the DDTP, its employees, persons designated by the DDTP for training, or any other persons other than agents or employees of the Call Center Service Provider, designated by the DDTP for any purpose, prior to, during, or subsequent to commencement of the provision of services, provided that the injury or damage was caused by the fault or negligence of the Call Center Service Provider.

- b.) Call Center Service Provider shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Call Center Service Provider, or for damage to alteration or attachments that may result from the normal operation and maintenance of the goods provided by the Call Center Service Provider during the contract.

29. LIQUIDATED DAMAGES FOR FAILURE TO MEET PERFORMANCE REQUIREMENTS

The parties acknowledge that in the event of a failure by the Call Center Service Provider to meet the performance requirements listed in the RFP (Exhibit A), damage shall be sustained by the DDTP and that it is and will be impractical and extremely difficult to ascertain and determine the actual damages which the DDTP will sustain in the event of and by reason of such failure; and the Call Center Service Provider therefore agrees that it will pay the DDTP for such failures, at the sole discretion of the DDTP, as stipulated herein.

- a.) Liquidated damages may be assessed for any of the following:

- i.) Whenever the Daily Average Speed of Answer exceeds the minimum requirements of the RFP per RFP Sections 6.3.10 and 6.3.9.(1.)
- ii.) Whenever the Blockage rate exceeds the minimum requirements of the RFP per RFP Section 6.3.11.

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Liquidated damages may be independently assessed for each of the above infractions, and independently for each of the following type of relay service:

- iii.) Inbound CRS voice calls, or
- iv.) Inbound CRS TTY calls (including HCO and VCO), or
- v.) Inbound CRS Speech-to-Speech calls, or
- vi.) Inbound CRS ASCII calls, or
- vii.) Inbound CRS Web Chat calls, or
- viii.) Inbound CRS Video Relay Service calls.

For example, liquidated damages may be assessed for failure to meet Average Speed of Answer just for the CCS vendor's Speech-to-Speech calls; and may also be assessed for failure to meet the blockage requirement for Web Chat calls.

The amount of liquidated damages paid shall be dependent upon the number of infractions of during the month, and the relative amount of CRS traffic that the CCS vendor relayed. The first ten cumulative infractions under this paragraph "a" per calendar month shall not incur any liquidated damages. The eleventh infraction during the month shall be \$250 if the CCS provider handled 25 percent or fewer CRS calls during the month, \$500 if the CCS provider handled between 25 and 50 percent of the CRS calls during the month, \$1,000 if the CCS provider handled between 50 and 75 percent of the CRS calls during the month, and \$1,500 if the CCS provider handled between 75 and 100 percent of the CRS calls during the month. The above rates shall increase by five percent (5.0%) for each subsequent infraction incurred during the month (e.g., \$500.00, \$525.00, \$551.25, \$578.81, and so on).

- b.) In addition to the possible assessment of liquidated damages described above in paragraph a.), the DDTP may also assess liquidated damages for any of the following:

- i.) When as a result of Periodic Quality Monitoring (as described in RFP Section 10.4) the CCS provider earns an overall score of less than fifty percent (50.0%) of the total possible points available from the Periodic Quality Monitoring.
- ii.) For failure to meet the in-service/cutover deadline imposed under this Agreement as stipulated in Paragraph 5.

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iii.) For refusal to permit performance monitoring as stipulated in Paragraph 12.

In any of the above situations (b.i. through b. iii.) the amount of liquidated damages assessed can be up to the one-half of the maximum limit indicated in paragraph d.), below. In the case of i.) immediately above, the assessment may only be taken during a single month within 90 days of the DDTPAC's adoption of the applicable Periodic Quality Monitoring report. In the case of ii.) immediately above, the assessment may be up to \$50,000 per day when no invoice is provided, e.g., the vendor has not performed, unless the CCS provider is the only CCS provider under contract to the DDTP in which case the assessment may be up to \$100,000 per day when no invoice is provided. In the case of iii.) immediately above, liquidated damages may be independently assessed for each day that the CCS provider refuses to permit performance monitoring.

c.) Liquidated damages shall not be assessed when the infraction is directly as a result of an increase of greater than ten percent (10.0%) in the CCS provider's non-customer-designated traffic, measured daily and compared to the average daily traffic during the previous 60 days, if the increase is as a result of sudden loss or significant degradation of service by another CCS provider. This prohibition against assessment of liquidated damages shall only be in effect during the time of increase due to this reason, and shall not extend beyond 60 days if the increase was less than 30%, and shall not extend beyond 90 days if the increase was 30% or greater.

d.) Notwithstanding paragraphs a.) and b.) above, the amount of liquidated damages assessed for infractions that occurred during any calendar month shall not exceed a fixed percentage of the CCS vendor's invoice for relay services performed during that calendar month before any setoffs. If the CCS vendor relays between 75% and 100% of the CRS calls (measured as the percent of the number of inbound CRS calls) the assessment shall not exceed six percent (6.0%) of the invoice. If the CCS vendor relays between 50% and 75% of the CRS calls the assessment shall not exceed six percent (6.0%) of the invoice. If the CCS vendor relays between 25% and 50% of the CRS calls the assessment shall not exceed four percent (4.0%) of the invoice. If the CCS vendor relays less than 25% of the CRS calls the assessment shall not exceed four percent (4.0%) of the invoice.

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The sole purpose of liquidated damages is to assure adherence to the performance requirements of the Agreement, inclusive of performance relative to all CRS calls, not just those paid for by the DDTP. Payment of liquidated damages does not relieve the CCS vendor of its obligation to perform under this contract. These liquidated damages have been agreed upon by the parties as a reasonable estimate of damages. No punitive intention is inherent. Written notification of each failure to meet a performance requirement will be given by the DDTP to the Call Center Service Provider.

30. COLLECTION OF DAMAGES (ACTUAL AND LIQUIDATED)

Amounts due the DDTP as actual or liquidated damages may be deducted by the DDTP from any money payable to the Call Center Service Provider pursuant to the Agreement or otherwise as a debt due the DDTP. The DDTP shall notify the Call Center Service Provider in writing of any claim for actual or liquidated damages pursuant to this provision at least ten (10) calendar days prior to the date the DDTP deducts such sums from money payable to the Call Center Service Provider.

31. SEVERABILITY

The Call Center Service Provider and the DDTP agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

32. COMPLETE INTEGRATION

This Contract, including the Request for Proposal and the Call Center Service Provider's response are intended to be a complete integration and there are no prior or contemporaneous, different or additional agreements pertaining to the subject matter of the contract. The DDTP's Request for Proposal is referred to herein as Exhibit A. The Call Center Service Provider's response is referred to herein as Exhibit B.

33. INDEPENDENT CONTRACTOR

The Call Center Service Provider and its agents and employees shall in the performance of this contract, act in an independent capacity and not as officers or employees or agents of the DDTP.

34. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the DDTP's operation of the California Relay Service (including the content of calls made via the CRS, and CRS caller preference, profile or 711 information) which are made available to the Call Center Service Provider in order to carry out this contract, or which become available to the Call Center Service Provider in carrying out this contract, shall be protected by the Call Center Service Provider from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the DDTP. The identification of all such confidential data and information as well as the DDTP's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the DDTP in writing to the Call Center Service Provider. If the methods and procedures employed by the Call Center Service Provider for the protection of the Call Center Service Provider's data and information are deemed by the DDTP to be adequate for the protection of the DDTP's confidential information, such methods and procedures may be used, with the written consent of the DDTP, to carry out the intent of this paragraph. The Call Center Service Provider shall not be required, under the provisions of this paragraph, to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Call Center Service Provider's possession, is independently developed by the Call Center Service Provider outside the scope of this contract, or is rightfully obtained from third parties.

35. NEWS RELEASES

Unless otherwise exempted, news releases pertaining to the award of this contract shall not be made without prior written approval of the DDTP.

36. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY

- a.) The Call Center Service Provider shall hold the DDTP, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.
- b.) The Call Center Service Provider may be required to furnish a bond to the DDTP against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

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- 1 c.) Call Center Service Provider, at its own expense, shall defend any action
2 brought against the DDTP to the extent that such action is based upon a
3 claim that the goods or software used by the Call Center Service Provider
4 to provide its services or the operation of such goods pursuant to a
5 current version of Call Center Service Provider supplied operating
6 software infringes a United States patent or copyright or violates a trade
7 secret. The Call Center Service Provider shall pay those costs and
8 damages finally awarded against the DDTP in any such action. Such
9 defense and payments shall be conditioned on the following:
- 10 i.) That the Call Center Service Provider shall be notified within a
11 reasonable time in writing by the DDTP of any notice of such claim;
12 and
- 13 ii.) That the Call Center Service Provider shall have the sole control of
14 the defense of any action on such claim and all negotiations for its
15 settlement or compromise, provided, however, that when principles
16 of government or public law are involved, the DDTP shall have the
17 option to participate in such action at its own expense.
- 18 d.) Should the goods or software, or the operation thereof, become, or in the
19 Call Center Service Provider's opinion is likely to become, the subject of a
20 claim of infringement of a United States patent or copyright or a trade
21 secret, the DDTP shall permit the Call Center Service Provider at its
22 option and expense either to procure the right to continue using the goods
23 or software, or to replace or modify the same so that they become non-
24 infringing. If none of these options can reasonably be taken, or if the use
25 of such goods or software in the provision of services shall be prevented
26 by injunction, the Call Center Service Provider agrees to make every
27 reasonable effort to procure substitute goods or software. If, in the sole
28 opinion of the DDTP, the return of such infringing goods or software
29 makes the continued provision of services under this Agreement
30 impractical, the DDTP shall then have the option of terminating this
31 Agreement, or applicable portions thereof.
- 32 e.) The contractor shall have no liability to the DDTP under any provision of
33 this clause with respect to any claim of patent, copyright or trade secret
34 infringement which is based upon:
- 35 i) The combination or utilization of goods furnished hereunder with
36 equipment or devices not made or furnished by the contractor; or,

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- ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
- iii) The modification by the DDTP of the equipment furnished hereunder or of the software; or
- iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.

f.) Call Center Service Provider certifies that it has appropriate systems and controls in place to ensure that DDTP allocated funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

g.) The foregoing states the entire liability of the contractor to the DDTP with respect to infringement of patents, copyrights or trade secrets.

37. HEADINGS

The headings used in this Agreement are for the convenience of reference only and not intended, to any extent for any purpose, to limit or define the text of any paragraph herein.

38. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California as applied to contracts formed and wholly performed in California, and enforced in and by the courts in the State of California.

39. NONDISCRIMINATION CLAUSE

a.) During the performance of this contract, the Call Center Service Provider and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Call Center Service Provider and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Call Center Service Provider and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California

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Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. The Call Center Service Provider and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b.) The Call Center Service Provider shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

40. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

The Call Center Service Provider swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Call Center Service Provider within the immediately preceding two-year period because of the Call Center Service Provider's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

41. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a.) In submitting a bid to the DDTP, the supplier offers and agrees that if the bid is accepted, it will assign to the DDTP all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the DDTP pursuant to the solicitation. Such assignment shall be made and become effective at the time the DDTP tenders final payment to the supplier.
- b.) If the DDTP receives, either through judgement or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the DDTP any portion of the recovery, including treble damages, attributable to overcharges that

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were paid by the assignor but were not paid by the DDTP as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

c.) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose, and

i) the assignee has not been injured thereby, or

ii.) the assignee declines to file a court action for the cause of action.

42. DRUG-FREE WORKPLACE CERTIFICATION

The Call Center Service Provider certifies under penalty of perjury under the laws of the State of California that the Call Center Service Provider will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

a.) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violation, as required by Government Code Sections 8335(a).

b.) Establish a Drug-Free Awareness Program as required by Government Code Section 8335(b) to inform employees about all of the following:

i.) the dangers of drug abuse in the workplace;

ii.) the person's or organization's policy of maintaining a drug-free workplace;

iii.) any available counseling, rehabilitation and employee assistance programs; and,

iv.) penalties that may be imposed upon employees for drug abuse violations.

c.) Provide, as required by Government Code Section 8335(c), that every employee who works on the proposed or resulting contract:

i.) will receive a copy of the company's drug-free policy statement; and,

ii.) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

43. FORCED, CONVICT, INDENTURED AND CHILD LABOR

In accordance with PCC Section 6108, Call Center Services Provider warrants that no foreign-made equipment, materials, or supplies used pursuant to this contract are produced in whole or in part by or with the benefit of forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

44. RECYCLING

Call Center Service Provider hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered or produced used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

45. CHILD SUPPORT COMPLIANCE ACT

The Call Center Service Provider acknowledges in accordance with PCC Section 7110, that:

- a.) The Call Center Service Provider recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b.) The Call Center Service Provider, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

46. AMERICANS WITH DISABILITIES ACT

The Call Center Service Provider assures the DDTP that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (USC 12101 et seq.)

47. WAIVER

Waiver, whether formal or constructive, by DDTP of strict performance of any provision of this Agreement in any specific instance shall not be deemed a waiver of, nor shall it prejudice DDTP's right to require strict performance of, the same

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provision or any other provision in the future. The rights and remedies of the DDTP herein are cumulative and are in addition to any other rights or remedies that the DDTP may have in law or equity.

48. TAXES, FEES AND LICENSES

All sales, property, excise and other federal, state and local taxes, licenses or fees, if any, resulting from this Agreement shall be paid by the Call Center Service Provider.

49. MODIFICATIONS TO AGREEMENT

The DDTP may request, at its sole discretion and by written notice, that certain changes be made to the general scope of work without invalidating this Agreement. No changes in the scope of work shall be made by the Call Center Service Provider without the prior written approval of the Executive Director of the DDTP and the authorized representative of the Provider, notwithstanding orders directed by judicial authority, the Federal Communications Commission or the California Public Utilities Commission. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

Upon receipt of any such written request from the Executive Director of the DDTP for a change to the general scope of work, the Call Center Service Provider at Call Center Service Provider's expense shall within a reasonable time thereafter, submit to the DDTP a detailed written price and schedule adjustment to this Agreement. The Call Center Service Provider shall not begin such work prior to DDTP approval of the modification and associated costs. Nothing stated in this section prohibits the Provider from submitting requests for changes to the DDTP Contract Manager, the acceptance or rejection of such an offer shall be at the discretion of the DDTP and subject to approval by the CPUC.

This Agreement and all obligations hereunder are subject to all applicable laws, rules, obligations and orders or rulings of any authorized court, agency or commission of federal or California government. This Agreement is subject to changes or modifications that may from time to time be directed by the Federal Communications Commission or the State of California. Any such changes or modifications shall be subject to the procedure set forth in this Agreement.

50. CONFLICTING DOCUMENTS

To the extent, if any, that this Agreement conflicts with the RFP and/or Call Center Service Provider's proposal, this Agreement shall take precedence and control. To

the extent, if any, that the RFP and the Call Center Service Provider's proposal conflict, the RFP shall take precedence and control.

51. SAFETY AND ACCIDENT PREVENTION

In performing work under this contract on DDTP or State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the DDTP may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

52. PRIORITY HIRING CONSIDERATIONS

If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

53. YEAR 2000 COMPLIANCE

Contractor warrants that it will provide only Year 2000 compliant products and/or services to the State in all present and future contracts and that Year 2000 compliant products and/or services meet the following requirements:

- a) For information technology goods and/or services, the contractor warrants and represents that the hardware, software and firmware goods and services delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date data with it. This warranty and representation is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.
- b) For non-information technology goods, the contractor warrants and represents that the goods delivered under this contract are "Year 2000 compliant". For purposes of this contract, a good is Year 2000 compliant if it will continue to function fully before, at and after the Year 2000 without interruption and, if applicable, with full ability to accurately and

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unambiguously process, display, compare, calculate, manipulate and otherwise utilize data information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the contractor.

- c) Resellers must obtain written confirmation from the manufacturer that the goods and/or services are Year 2000 compliant, as defined above.

54. INDEMNIFICATION

Provider agrees to indemnify, defend and save harmless the DDTP, the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

55. WARRANTY

Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

- a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The DDTP's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.

- b) All warranties, including special warranties specified elsewhere herein, shall inure to the DDTP, its successors, assigns, customer agencies and users of the goods or services.

56. ENTIRE AGREEMENT; COUNTERPARTS

This Agreement, incorporating Exhibits A and B, constitutes the entire Agreement between the parties. No other Agreement, statement, or promise relating to the subject matter of this Agreement which is contained herein shall be valid or binding. No changes, alternatives or modifications hereto shall be effective unless in writing and signed by a representative of each party authorized to bind said

Exhibit 11B, Call Center Services Model Contract

party. This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which shall constitute one and the same instrument.

57. SIGNATURES

Executed this _____ day of _____, 2002.

For the Deaf and Disabled Telecommuni-
Provider: cations Program:

For the Call Center Services

NETWORK MANAGEMENT SERVICES AGREEMENT

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which _____, a _____ corporation (hereinafter called the Network Management Services Provider), will provide network management services for a state-wide telecommunications relay service known as the California Relay Service (hereinafter called CRS). The CRS is a service through which hearing-impaired and speech-impaired persons are provided with access to the public telecommunications network in California functionally equivalent to that provided to other public telecommunications network customers. In accordance with California Code of Regulations, Title 20, Public Utilities Code § 2881, the CRS is under the authority of the California Public Utilities Commission (hereinafter called CPUC) and under the oversight of the CPUC's Deaf and Disabled Telecommunications Program Administrative Committee (hereinafter called DDTPAC) with advice provided by the California Relay Service Advisory Committee (hereinafter called CRSAC), and program administration provided by the Deaf and Disabled Telecommunications Program (hereinafter called DDTP.) Either prior to award or after, the California State Legislature and the CPUC may significantly alter the assignment of responsibilities regarding CRS and this contract from the DDTPAC, CRSAC and the DDTP, to other entities. Therefore, by order of the CPUC, the CPUC may at any time unilaterally reassign any or all of the responsibilities of the DDTPAC, CRSAC and the DDTP under this contract and its exhibits, including signature of the contract, to another entity, including but not limited to entities of the State of California.

2. TERM OF AGREEMENT

This Agreement is effective upon signing by the Network Management Services Provider and the DDTP and formal approval of the CPUC. Once effective, the Network Management Services Provider shall provide the services described in paragraph 4, Scope of Work, with the period of service supporting live CRS calls to be continuously provided for three years from the date of In-Service/Cutover stipulated in the DDTP CRS Request for Proposal (RFP) Section 1.7 item 23, or other date as mutually agreed upon by the Network Management Services provider and the DDTP. The DDTP shall have the option to further extend this Agreement and the service period for up to two one-year terms and one six-month term as further set forth in the RFP. These service terms shall remain in effect unless earlier terminated by the DDTP in accordance with the termination provisions contained in Paragraphs 24 and 25 herein.

If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. When appropriation is delayed, the Network Management Services Provider may, with the approval of the DDTP

Exhibit 11C, Network Management Services Model Contract

1 Contract Manager, continue to provide the services herein, however under such
2 circumstances the Network Management Services Provider shall do so at its own
3 risk, and the obligation of the DDTP to pay for such services shall be completely
4 dependent upon the further appropriation of applicable funds. If funds to effect
5 such continued payment are not appropriated, contractor agrees to take back any
6 affected goods furnished under this contract, terminate any services supplied to the
7 DDTP under this contract, and relieve the DDTP of any further obligation therefor.

3. CONTRACT AND PROJECT MANAGERS

The DDTP and the Network Management Services Provider shall each establish a Contract Manager assigned to this contract and may establish a Project Manager assigned to this project. If at anytime a Project Manager is not assigned, the responsibilities of the Project Manager shall revert to the Contract Manager. Assignment of the DDTP's Project Manager shall be via written notice from the DDTP's Executive Director to the Network Management Services Provider's Contract Manager, copied to the Network Management Services Provider's Project Manager. Assignment of the Network Management Services Provider's Project Manager shall be via written notice from the Network Management Services Provider's Contract Manager to the DDTP's Contract Manager, copied to the DDTP's Executive Director and Project Manager.

The Contract Manager for the Network Management Services Provider shall be

The Contract Manager for the DDTP shall be

The DDTP may change its Contract or Project Manager at any time upon written notice to the Network Services Provider's Contract Manager by the DDTP's Executive Director. The Network Management Services Provider's Contract Manager or Project Manager may be changed 14-days following the DDTP's receipt of a written notice addressed to the DDTP's Contract Manager and which specifically identifies the new Contract or Project Manager, his/her qualifications, and a transition plan. The Network Management Services Provider will provide its new Contract or Project Manager with a full working knowledge of the appropriate contract terms and commitments, the project's status, employed technologies and personnel, and shall ensure that the new Contract or Project Manager has familiarity with all aspects of the responsibilities he/she is about to assume.

All correspondence and transmittals of formal notifications concerning this Agreement shall be addressed to the Contract Managers unless otherwise stipulated herein. The assigned Contract and Project Managers shall handle all communications in a timely manner. All formal notices shall be deemed to be delivered five days after mailing by registered or certified mail, return receipt requested. A change of address shall be noticed in the same manner.

4. SCOPE OF WORK

The Network Management Services Contractor shall establish and operate network management, monitoring, reporting, call routing, database and all other services associated with the Network Management Services component of the California Relay Service as described in:

Exhibit 11C, Network Management Services Model Contract

- 1 a.) the DDTP's RFP (attached hereto as Exhibit A and hereinafter referred
2 to as the RFP); and
- 3 b.) the contractor's proposal in response to the RFP, including written
4 responses to the DDTP's questions (attached hereto as Exhibit B and
5 hereinafter referred to as Contractor's Proposal).

Exhibit 11C, Network Management Services Model Contract

The Network Management Services Provider shall retain full control of its facilities. The Network Management Services Provider is solely responsible for the provision of those services described as Network Management Services in Exhibits A and B attached hereto and made a part of this Agreement.

To accomplish the objectives of the CPUC and the DDTP the Network Management Services Provider will coordinate and consult on an ongoing basis concerning network services provided per the terms and conditions of this Agreement.

5. SCHEDULING AND COMPLETION OF WORK

The Network Management Services Provider shall initiate the network management services on a statewide basis not later than the time specified in Section 1, Key Action Dates for in-service/cutover, and as described in the DDTP's RFP as Phase 1, subject to the approval of this Agreement by the CPUC and with the specific authorization of the DDTP. The key action dates listed in RFP section 1.7. that follow the date listed for award and execution, including the in-service/cutover date for the beginning of handling live CRS calls under this contract, may be modified as stipulated in RFP Section 10.6.1. Such modification shall effectively change such dates listed in RFP section 1.7. The in-service/ cutover date for Phase 2, if approved by the CPUC and ordered by the DDTP, shall be at a date mutually agreed upon by the DDTP and the Network Management Services Provider.

Time is of the essence of this Agreement and, accordingly, all time limits shall be strictly construed and strictly enforced. The Network Management Services Provider's failure to meet the in-service/cutover deadline imposed hereunder, or any such renegotiated later in-service/ cutover date, shall be considered a material and significant breach of this Agreement and shall entitle the DDTP to liquidated damages as set forth in Paragraph 29. Failure of the Network Management Services Provider to pass Acceptance Testing prior to the in-service date and a subsequent ordered delay by the DDTP until Acceptance Testing is passed or provisionally passed, shall not relieve the Network Management Services Provider of its liability for said liquidated damages. A start date ordered by the DDTP to be later than that specified in Section 1, Key Action Dates and for which the DDTP's order specifically states that the delay is no fault of the Network Management Services Provider shall not be subject to such liquidated damages.

The Network Management Services Provider shall submit, to the Project Manager of the DDTP, a detailed work plan including time lines consistent with the service start-up plan included in the Network Management Services Provider's proposal and the RFP which details the establishment and implementation of the statewide CRS and the associated time frames. The Network Management Services Provider shall submit the work plan to the DDTP no later than fourteen (14) calendar days from the date the CPUC approves this Agreement.

Exhibit 11C, Network Management Services Model Contract

1 The DDTP shall review the Network Management Services Provider's work plan
2 and authorize its implementation on a mutually agreed to service date. Approval by
3 the DDTP Executive Director of the Network Management Services Provider's work
4 plan shall in no way relieve or release the Network Management Services Provider
5 from any other obligations to properly perform and complete their portion of the
6 establishment, implementation, and operation of CRS in accordance with this
7 Agreement.

Exhibit 11C, Network Management Services Model Contract

The Network Management Services Provider agrees that a representative of said Network Management Services Provider shall be available to meet with the DDTP and representatives of other CRS contractors for the purposes of scheduling CRS start-up and to address and resolve other issues and considerations pertaining to CRS. The representative will have the authority to commit the Network Management Services Provider.

6. COMPENSATION

The Network Management Services Provider shall be reimbursed at the monthly rate(s) bid in its response to the DDTP's RFP and which is attached and made a part of this Agreement. The DDTP will not compensate the Network Management Services Provider for any costs incurred for start up or termination.

7. INVOICES

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

For contracts in excess of \$50,000, in accordance with GC Section 16645 et. seq, every invoice shall include a certification that the contractor shall not use state funds to assist, promote, or deter union organizing during the life of the contract, including any extensions or renewals thereof.

8. REQUIRED PAYMENT DATE

Unless otherwise specified, payment will be made in accordance with Government Code Sections 927 et seq., as applicable. Payment shall not be due until the later of (a) the date of the performance of services supplied to the DDTP; or (b) receipt of an accurate invoice.

9. TAXES

Unless otherwise required by law, the DDTP is exempt from Federal excise taxes. The DDTP will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the DDTP pursuant to this contract.

10. EXAMINATION AND AUDIT

The Network Management Services Provider agrees, by signing this contract, that the DDTP, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. The Network Management Services Provider agrees to maintain such

Exhibit 11C, Network Management Services Model Contract

records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Such records shall either be maintained within California, or the Network Management Services Provider shall pay the DDTP for its costs for travel at the State's rates and per diem allowances then in effect, for the DDTP or its representatives to examine and audit the records located outside of California. The Network Management Services Provider agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who in the sole opinion of the DDTP might have information related to such records. Further, the Network Management Services Provider agrees to include a similar right of the DDTP to audit records and interview staff in any subcontract related to performance of the contract. Examination and audit shall be subject to reasonable access, identification, security, safety or other policies of the Provider, which shall not be employed to deny or delay access. During any interviews with personnel, a representative of the Provider may be in attendance.

11. PERFORMANCE MONITORING

The Network Management Services provider shall permit the DDTP and any other duly authorized agent or governmental agency to monitor all such activities conducted by the Network Management Services provider and its subcontractors pursuant to the terms of this Agreement, subject to reasonable access, identification, security, safety or other policies of the Provider, which shall not be employed to deny or delay access. As the monitoring agency may at its sole discretion deem necessary or appropriate, such monitoring may consist of evaluation of internal operating and management procedures, examination of program data, special analyses, on-site checking, interviews of personnel, or any other reasonable procedure. A representative of the Provider may be in attendance during interviews of personnel.

All monitoring shall be performed in a manner that will not unduly interfere with the provision of services. Duly authorized agents of the DDTP shall have the right to make on-site checks upon 5 days advance written notice. The Network Management Services Provider shall make provisions to allow agents of the DDTP this capability.

The DDTP may not monitor the relay of an actual conversation without the approval of both parties to the conversation, unless the parties are notified that the conversation may be monitored for quality assurance. The DDTP may arrange for calls to test the relayed communications, or may perform other tests to measure the performance of the Provider, without the permission of the Provider. Such calls or tests will not be identified as monitoring calls or tests. Since CRS is a 24 hour, 7

Exhibit 11C, Network Management Services Model Contract

1 days a week service, duly authorized agents of the DDTP shall have the right to
2 make on-the-spot checks at any time without any warning.

3 The fact that such monitoring is undertaken shall in no way relieve or release the
4 Network Management Services Provider from its obligation to properly perform its
5 duties in accordance with the Agreement nor from Network Management Services
6 Provider's full responsibility for damages or loss caused by Network Management
7 Services Provider, its subcontractors, employees or agents. The Network
8 Management Services Providers obligations referenced under this paragraph shall
9 be continual and shall not be affected by DDTP acceptance of invoices. The DDTP
10 shall not be required to request any changes based on the monitoring undertaken
11 pursuant to this Clause.

12. PERFORMANCE BOND

13 Faithful Performance bonds shall be furnished in the manner described in Section 5
14 of the RFP.

13. SUBCONTRACTS

16 The Network Management Services Provider shall submit any proposed
17 subcontracts anticipated to equal 15% or more of the Network Management
18 Services Provider's reimbursement to the DDTP for its written approval before
19 entering into same. No work shall be subcontracted without the prior approval of
20 the DDTP Project Manager. For purposes of this Agreement, any subcontractors
21 identified in the Network Management Services Provider's response to this RFP are
22 considered approved, with the exception that the DDTP shall be free to examine, at
23 its request, the contract between the Network Management Services Provider and
24 its subcontractor. Upon the termination of any such subcontract, the DDTP Project
25 Manager shall be notified immediately.

14. RELATIONSHIP WITH CONTRACTOR AND SUBCONTRACTOR

27 The Network Management Services Provider shall be responsible for all actions of
28 its subcontractors and all payment to its subcontractors. Failure of a subcontractor
29 to perform for any reason shall not relieve the Network Management Services
30 Provider of the responsibility for competent and timely performance of all duties
31 under this Agreement. The DDTP will not deal with subcontractors except through
32 the Network Management Services Provider's Project Manager, or except as
33 stipulated in paragraph 21.a. All agreements with the subcontractors shall provide
34 that the subcontractor's sole remedy for non-payment by the Network Management
35 Services Provider under subcontracts shall be against the Network Management
36 Services Provider, and not result in liens or claims of any sort against the DDTP.

Exhibit 11C, Network Management Services Model Contract

1 All requests for changes of work within this Agreement shall be in writing between
2 the Project Manager for the DDTP and the Project Manager for the Network
3 Management Services Provider.

4 **15. ASSIGNMENT**

5 Except for the subcontractors identified in the Network Management Services
6 Provider's Proposal, the Network Management Services Provider may not transfer
7 by assignment, novation or subcontract its obligation to perform under this
8 Agreement or any part thereof, unless the prior written approval of the Executive
9 Director of the DDTP as to each assignment or subcontract has been acquired.

10 The Network Management Services Provider may not, without prior written
11 consent of the DDTP's Executive Director, assign any right that it may have under
12 this Agreement. Consent may be given or withheld at the sole discretion of the
13 DDTP, provided that such assignment is expressly made subject to all defenses,
14 setoffs or counter claims which would be available to the DDTP against the
15 Network Management Services Provider in the absence of such assignment. For the
16 purpose of this paragraph, the DDTP will not unreasonably prohibit the Provider
17 from freely assigning its right to payment, provided that the Provider remains
18 responsible for its obligations hereunder.

19 The DDTP's consent to one or more assignment(s) or subcontractors hereunder shall
20 not constitute a waiver or diminution of the DDTP's absolute right to consent to
21 each and every subsequent assignment or subcontractor.

22 In the event of any subcontract hereunder to which the DDTP has consented, each
23 such subcontract shall contain a provision that further assignments shall not be
24 made to any third or subsequent tier subcontractor without the additional written
25 consent of the DDTP.

26 The DDTP's rights and obligations, in whole or in part, to this Agreement may be
27 assigned by order of the California Public Utilities Commission to any other entity.

28 **16. INSURANCE COVERAGE**

29 When performing work under this contract on DDTP property in the care, custody
30 or control of the DDTP, or on the property of other providers in the CRS
31 deployment, the Network Management Services Provider shall provide insurance
32 coverage for itself and all of its employees used in connection with performance of
33 services under this Agreement, and insure that all subcontractors shall be similarly
34 covered. Such policies shall be issued by a financially sound carrier and/or carriers
35 and shall be subject to the reasonable approval of the DDTP. Copies of certificates

Exhibit 11C, Network Management Services Model Contract

of insurance naming the DDTP as an additional insured shall be provided to the DDTP. Such insurance coverage shall hold the DDTP harmless from all claims of bodily injury, including death, and property damage, including loss of use, by Network Management Services Provider, its employees, agents or subcontractors and their employees. This insurance will include Workers Compensation as required by law applicable to the Provider; comprehensive general liability and bodily injury insurance in amounts that are commercially reasonable under the given circumstances.

17. REGULATORY AUTHORITY

The Network Management Services Provider assumes responsibility for compliance with all regulatory requirements of the CPUC, as well as all other applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the DDTP and the State against any loss, cost damage or liability by reason of the contractor's violation of this provision.

18. CONFLICT OF INTEREST

The Network Management Services Provider warrants that neither it nor its subsidiaries are currently engaged in any relationship which could result in a conflict of interest in the performance of this Agreement. The Network Management Services Provider further agrees to refrain from entering into any such relationship, and to notify the Contract Manager of the DDTP promptly of any potential conflict of interest for itself or its subcontractors. The DDTP may exercise its option to terminate this Agreement if a conflict is found.

19. COVENANT AGAINST GRATUITIES

The Network Management Services Provider warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Network Management Services Provider, or any agent or representative of the Network Management Services Provider, to any officer or employee of the DDTP with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the DDTP shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the DDTP in procuring on the open market any items that the Network Management Services Provider agreed to supply, or services to perform, shall be borne and paid for by the Network Management Services Provider. The rights and remedies of the DDTP provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

**20. INCORPORATION OF REPRESENTATIONS AND WARRANTIES;
FURTHER REPRESENTATIONS AND WARRANTIES**

This Agreement expressly incorporates the Network Management Services Provider's representations, certifications and warranties in Exhibits A and B and in other provisions of this Agreement.

The Network Management Services Provider further represents and warrants:

- a) The Network Management Services Provider is a corporation duly organized, validly existing in good standing under the laws of the State of _____. The Network Management Services Provider has all necessary power and authority under applicable corporate law and its organizational documents to carry on the business as it is described herein.
- b) The Network Management Services Provider has full corporate power and authority to execute, deliver and perform this Agreement. The execution and delivery of this Agreement and performance under this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Network Management Services Provider. This Agreement has been duly executed and delivered and attested to by duly authorized officers of the Network Management Services Provider and is a valid and binding agreement, enforceable against the Network Management Services Provider in accordance with its terms.
- c.) The Network Management Services Provider warrants that it has full power and authority to grant the rights herein granted and will hold the DDTP harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Provider avers that it will not enter into any arrangement with any third party which might abridge any rights of the DDTP under this Agreement.

21. RIGHTS IN DATA, 711 DATABASE

- a.) The DDTP shall retain unabridged rights to use all current and acquired CRS personal user data resident in its 711 database whether or not such data was marked as proprietary, including as Customer Proprietary Network Information (CPNI), when furnished by the CCS Provider. The Network Management Provider shall not be granted exclusive or proprietary rights to the 711 data. The DDTP may, at its sole discretion,

Exhibit 11C, Network Management Services Model Contract

1 supply its 711 data or access to the data, to other parties for the sole
2 purposes of routing CRS calls; establishing, confirming or changing the
3 data; and summary reporting of the data. Such assignment shall not
4 reduce the rights of the DDTP regarding said data. The NMS Provider
5 shall not permit access to the 711 data to any entities without the prior
6 approval of the DDTP. The Network Management Provider shall have
7 no rights to that data other than those expressly granted to it by the
8 DDTP. The NMS Provider, the DDTP and its assignee(s) shall treat all
9 711 data as confidential under clause 34.

- 10 b.) The NMS provider shall retain the services of an independent, off-site,
11 third party subcontractor for the purposes of securely storing a copy of
12 the 711 database to be used for backup purposes for disaster recovery. A
13 physical copy of the stored database shall only be provided to the DDTP
14 in the event of NMS provider default, termination, stop work order, or
15 transition to a different NMS vendor, and under these conditions, the
16 DDTP may obtain the copy of the database directly from the third party.
17 The NMS vendor shall, within sixty days of CPUC approval of this
18 contract award, notify the DDTP of the third party storage subcontractor
19 name, address, contact person and phone number; and shall further
20 notify the DDTP prior to any change in third party storage subcontractor.
21 The third party subcontractor shall assure complete confidentiality of 711
22 data, shall not release the data to any party other than the NMS vendor
23 except as stipulated herein, and shall not use the data for any purpose.
- 24 c.) The DDTP shall not acquire or retain ownership to the CRS 711 database
25 application and/or other software and custom applications acquired by
26 and developed for use by the Network Management Services provider in
27 fulfilling the provider's obligations under this contract. The Network
28 Management Services provider shall pay all acquisition and licensing
29 fees during the term of this contract.

30 22. DISPUTES

- 31 a.) The parties shall deal in good faith and attempt to resolve potential
32 disputes informally. If the dispute persists, the Network Management
33 Services Provider shall submit to the DDTP Contract Manager a written
34 demand for a final decision regarding the disposition of any dispute
35 between the parties arising under, related to, or involving this contract,
36 unless the DDTP, on its own initiative, has already rendered such a final
37 decision. The Network Management Services Provider's written demand
38 shall be fully supported by factual information. If such demand involves a
39 cost adjustment to the contract, Network Management Services Provider

Exhibit 11C, Network Management Services Model Contract

1 shall include with the demand a written statement signed by an
2 authorized person indicating that the demand is made in good faith, that
3 the supporting data are accurate and complete and that the amount
4 requested accurately reflects the contract adjustment for which the
5 Network Management Services Provider believes the DDTP is liable.
6 The Contract Manager shall provide a written decision on the merits of
7 the appeal within 30-days, unless the issue requires a decision by the
8 DDTPAC, CRSAC or the CPUC, which shall also be communicated in
9 writing to the Provider. If the Provider does not receive notice of the
10 decision (or the submission of the issue to the DDTPAC, CRSAC or the
11 CPUC) the Provider may assume that there was an adverse decision. If
12 the Network Management Services Provider is not satisfied with the
13 decision of the DDTP's Contract Manager, the Network Management
14 Services Provider may appeal the decision to the DDTP's Executive
15 Director.

16 b.) Pending the final resolution of any dispute arising under, related to, or
17 involving this contract, the Network Management Services Provider
18 agrees to diligently proceed with the performance of this contract,
19 including the delivery of goods or providing of services in accordance with
20 the DDTP's instructions. Network Management Services Provider's
21 failure to diligently proceed in accordance with the DDTP's instructions
22 shall be considered a material breach of this contract.

23 c.) Any final decision of the DDTP shall be expressly identified as such, shall
24 be in writing, and shall be signed by the DDTP's Executive Director. If
25 the DDTP fails to render a decision within 90 days after receipt of the
26 Network Management Services Provider's demand, it shall be deemed a
27 final decision adverse to the Network Management Services Provider's
28 contentions. The DDTP's final decision shall be conclusive and binding
29 regarding the dispute unless the Network Management Services Provider
30 commences an action in a court of competent jurisdiction to contest such
31 decision within 90 days following the date of the final decision or one (1)
32 year following the accrual of the cause of action, whichever is later.

33 d.) The parties may request binding arbitration under the rules of the
34 American Arbitration Association, as set out in California Contract Code,
35 within the stipulated timeframe. The DDTP shall have the right to
36 accept or reject a request to enter into binding arbitration. Any dispute
37 resolution action filed shall be in a location convenient to the Executive
38 Management of the DDTP.

23. STOP WORK

- a.) The DDTP may, at any time, by written Stop Work Order to the Network Management Services Provider, require the Network Management Services Provider to stop all, or any part, of the work called for by this contract for a period of up to 90 days after the Stop Work Order is delivered to the Network Management Services Provider, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of a Stop Work Order, the Network Management Services Provider shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Network Management Services Provider, or within any extension of that period to which the parties shall have agreed, the DDTP shall either:
- i.) Cancel the Stop Work Order
- ii.) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b.) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Network Management Services Provider shall resume work. The DDTP shall make an equitable adjustment in the contract price, and the contract shall be modified, in writing, accordingly, if
- i.) The Stop Work Order results in an increase in the time required for, or in the Network Management Services Provider's cost properly allocable to the performance of any part of this contract; and
- ii.) The Network Management Services Provider asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the DDTP decides the facts justify the action, the DDTP may receive and act upon a proposal submitted at any time before final payment under this contract.
- c.) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the DDTP, the DDTP shall allow

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reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

d.) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated for default, the DDTP may allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.

e.) The DDTP shall not be liable to the Network Management Services Provider for loss of profits because of a Stop Work Order.

24. TERMINATION FOR THE CONVENIENCE OF THE DDTP

a.) The DDTP may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the DDTP or the CPUC determines that a termination is in the DDTP's interest. Termination shall be implemented by delivering to the Network Management Services Provider a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.

b.) After receipt of a Notice of Termination, and except as directed by the CPUC, the Network Management Services Provider shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Network Management Services Provider shall:

i.) Stop work as specified in the Notice of Termination.

ii.) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

iii.) Terminate all subcontracts to the extent they relate to the work terminated.

iv.) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontract; the approval or ratification of which will be final for purposes of this clause.

c.) If this Agreement is terminated for the convenience of the DDTP at any time during the first twelve months of service (after the Network Management Services Provider's actual first in-service/cutover date), the

Exhibit 11C, Network Management Services Model Contract

DDTP shall pay the Network Management Services Provider twenty-five percent (25.0%) of its projected monthly CRS revenues from the DDTP from this contract during that portion of the twelve months that remains after the effective date of the termination. The projected revenues shall be based solely on the monthly rate awarded under RFP Exhibit 7C indicated as “per month for the first twelve months” for regular CRS services (i.e., not inclusive of any other claims.) The projected monthly revenues under this clause shall also not include the rate stipulated under “per DDTP approved CCS CRS site,” and shall not include any revenues derived or forecast from other sources even though such revenue may be dependent upon services provided for and governed under this Agreement.

25. TERMINATION FOR DEFAULT

- a.) The DDTP may, subject to the Force Majeure paragraph contained herein, by written notice of default to the Network Management Services Provider, terminate this contract in whole or in part if the Network Management Services Provider fails to:
 - i.) Perform services within the time specified in the contract or any amendment thereto;
 - ii.) Make progress, so as to endanger performance of this contract (but see paragraph (b) below); or
 - iii.) Perform any of the other provisions of this contract (but see subparagraph (b) below).
- b.) The DDTP’s right to terminate this contract under subparagraphs ii and iii above, may be exercised if the Network Management Services Provider does not cure such failure. From receipt of written notification by the DDTP of such a failure, the cure timeframe shall be 7-days if the reported issues are service effecting, 30-days if issues are occasional, sporadic or not service effecting, or the time frame stated in the cure notice issued by the DDTP, whichever term is longer. The timeframe issued in the DDTP’s notice may be longer if the issues are deemed by the Contract Manager not to be crucial to management or significantly service effecting. Based on the communications between the Provider and the DDTP during the cure period, the DDTP may extend the timeframe without losing any of its rights under this agreement. The DDTP’s Contract Manager shall issue a written release to the Provider as soon as an acceptable resolution to the issue of concern is achieved.

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1 c.) If the DDTP terminates this contract in whole or in part, it may acquire,
2 under the terms and in the manner the DDTP considers appropriate,
3 goods or services similar to those terminated, and the Network
4 Management Services Provider will be liable to the DDTP for any excess
5 costs for those services. However, the Network Management Services
6 Provider shall continue the work not terminated.

7 d.) If the contract is terminated for default, the DDTP may require the
8 Network Management Services Provider to sequester and protect, as
9 directed by the DDTP, any property in its possession in which the DDTP
10 has an interest.

11 e.) The DDTP shall pay contract price for completed services delivered and
12 accepted. The Network Management Services Provider and DDTP shall
13 agree on the amount of payment for services performed and accepted.
14 Failure to agree will be a dispute under the Disputes clause. The DDTP
15 may withhold any sum the DDTP determines to be necessary to protect
16 the DDTP against loss because of outstanding liens or claims of former
17 lien holders.

18 f.) If, after termination, it is determined that the Network Management
19 Services Provider was not in default, or that the default was excusable,
20 the rights and obligations of the parties shall be the same as if the
21 termination had been issued for the convenience of the DDTP.

22 g.) The rights and remedies of the DDTP in this clause are in addition to any
23 other rights and remedies provided by law or under this contract.

24 **26. FORCE MAJEURE**

25 Neither the DDTP nor the Network Management Services Provider shall be
26 considered in default in the performance of its obligations under this Agreement to
27 the extent that the performance of such obligations is prevented or delayed by any
28 cause beyond the reasonable control of the affected party which such party could
29 not, by due diligence, have avoided. Such causes, including but not limited to, acts
30 of God or the public enemy, acts of governmental authority in either sovereign or
31 contractual capacity, floods, explosions and riots, shall not relieve the affected party
32 of liability in the event of its failure to use diligence to remedy the situation and
33 remove the cause in an adequate manner and with all reasonable dispatch and to
34 give notice and full particulars of the same in writing to the other parties as soon as
35 possible after the occurrence of the cause that prevented or delayed performance of
36 obligations.

27. RIGHTS AND REMEDIES OF DDTP FOR DEFAULT

- a.) In the event any goods furnished or services provided by the Network Management Services Provider in the performance of this Agreement should fail to conform to the requirements herein, or to the RFP response submitted by the Network Management Services Provider, the DDTP may reject the same and it shall become the duty of the Network Management Services Provider to correct the performance of service(s) provided, without expense to the DDTP.
- b.) In addition to any other rights and remedies the DDTP may have, the DDTP may require the Network Management Services Provider, at the Network Management Services Provider's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Network Management Services Provider.
- c.) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the Network Management Services Provider, any loss or damage sustained by the DDTP in procuring any items or services which the Network Management Services Provider agreed to supply shall be born by the Network Management Services Provider.
- d.) The DDTP reserves the right to offset the reasonable cost of all damages caused to the DDTP against any outstanding invoices or amounts owed to Network Management Services Provider or to make a claim against the Network Management Services Provider therefore.

28. NETWORK MANAGEMENT SERVICES PROVIDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a.) The Network Management Services Provider shall be liable for damages arising out of injury to the person and/or damage to the property of the DDTP, its employees, persons designated by the DDTP for training, or any other persons other than agents or employees of the Network Management Services Provider, designated by the DDTP for any purpose, prior to, during, or subsequent to commencement of the provision of services, provided that the injury or damage was caused by the fault or negligence of the Network Management Services Provider.
- b.) Network Management Services Provider shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Network Management Services Provider, or for damage

to alteration or attachments that may result from the normal operation and maintenance of the goods provided by the Network Management Services Provider during the contract.

29. LIQUIDATED DAMAGES FOR FAILURE TO MEET PERFORMANCE REQUIREMENTS

The parties acknowledge that in the event of a failure by the Network Management Services Provider to meet the performance requirements listed in the RFP (Exhibit A), damage shall be sustained by the DDTP and that it is and will be impractical and extremely difficult to ascertain and determine the actual damages which the DDTP will sustain in the event of and by reason of such failure; and the Network Management Services Provider therefore agrees that it will pay the DDTP for such failures, at the sole discretion of the DDTP, liquidated damages as specified herein.

a.) Liquidated damages may be assessed at \$500 for each incident where the Network Management Services Provider is either:

- i.) unable to provide routing instructions to the Network Services Provider upon receiving a routing request from the Network Services Provider calls for a continuous period 10 minutes or more (through no fault of the NS Provider nor the fault of the providers of the NMS to NS data circuits), or
- ii.) unable to monitor the status of an authorized CRS CCS site for a continuous period of 10 minutes or more (through no fault of the CCS providers nor the fault of the providers of the NMS to CCS data circuits).

Such assessment shall repeat as another incident after each 30 continuous minutes without such service (i or ii, above) to a maximum of \$4,000 per day (24 hour period beginning at 12:00 midnight Pacific Time.

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b.) Liquidated damages may also be assessed for not meeting the in-service/cutover deadline imposed under this Agreement as stipulated in Paragraph 5 up to a maximum of \$5,000 per day for phase 1 only.

c.) Notwithstanding paragraphs a.) and b.) above, during any calendar month the maximum liquidated damages assessed shall not exceed ten percent (10%) of the NMS vendor's invoice before any setoffs.

The sole purpose of liquidated damages is to assure adherence to the performance requirements of the Agreement. Payment of liquidated damages does not relieve the NMS vendor of its obligation to perform under this contract. These liquidated damages have been agreed upon by the parties as a reasonable estimate of damages. No punitive intention is inherent. Written notification of each failure to meet a performance requirement will be given by the DDTP to the Network Management Services Provider.

30. COLLECTION OF DAMAGES (ACTUAL AND LIQUIDATED)

Amounts due the DDTP as actual or liquidated damages may be deducted by the DDTP from any money payable to the Network Management Services Provider pursuant to the Agreement or otherwise as a debt due the DDTP. The DDTP shall notify the Network Management Services Provider in writing of any claim for actual or liquidated damages pursuant to this provision at least ten (10) calendar days prior to the date the DDTP deducts such sums from money payable to the Network Management Services Provider.

31. SEVERABILITY

The Network Management Services Provider and the DDTP agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

32. COMPLETE INTEGRATION

This Contract, including the Request for Proposal and the Network Management Services Provider's response are intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract. The Request for Proposal is referred to herein as Exhibit A. The Network Management Service Provider's response is referred to herein as Exhibit B.

1 **33. INDEPENDENT CONTRACTOR**

2 The Network Management Services Provider and its agents and employees shall in
3 the performance of this contract, act in an independent capacity and not as officers
4 or employees or agents of the DDTP.

34. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the DDTP's operation of the California Relay Service, including the content of calls made via the CRS, and CRS caller preference, profile or 711 information which are made available to the Network Management Services Provider in order to carry out this contract, or which become available to the Network Management Services Provider in carrying out this contract, shall be protected by the Network Management Services Provider from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the DDTP. The identification of all such confidential data and information as well as the DDTP's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the DDTP in writing to the Network Management Services Provider. If the methods and procedures employed by the Network Management Services Provider for the protection of the Network Management Services Provider's data and information are deemed by the DDTP to be adequate for the protection of the DDTP's confidential information, such methods and procedures may be used, with the written consent of the DDTP, to carry out the intent of this paragraph. The Network Management Services Provider shall not be required, under the provisions of this paragraph, to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Network Management Services Provider's possession, is independently developed by the Network Management Services Provider outside the scope of this contract, or is rightfully obtained from third parties.

35. NEWS RELEASES

Unless otherwise exempted, news releases pertaining to the award of this contract shall not be made without prior written approval of the DDTP.

36. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY

- a.) The Network Management Services Provider shall hold the DDTP, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.
- b.) The Network Management Services Provider may be required to furnish a bond to the DDTP against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

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1 c.) Network Management Services Provider, at its own expense, shall defend
2 any action brought against the DDTP to the extent that such action is
3 based upon a claim that the goods or software used by the Network
4 Management Services Provider to provide its services or the operation of
5 such goods pursuant to a current version of Network Management
6 Services Provider supplied operating software infringes a United States
7 patent or copyright or violates a trade secret. The Network Management
8 Services Provider shall pay those costs and damages finally awarded
9 against the DDTP in any such action. Such defense and payments shall
10 be conditioned on the following:

11 i.) That the Network Management Services Provider shall be notified
12 within a reasonable time in writing by the DDTP of any notice of
13 such claim; and

14 ii.) That the Network Management Services Provider shall have the
15 sole control of the defense of any action on such claim and all
16 negotiations for its settlement or compromise, provided, however,
17 that when principles of government or public law are involved, the
18 DDTP shall have the option to participate in such action at its own
19 expense.

20 d.) Should the goods or software, or the operation thereof, become, or in the
21 Network Management Services Provider's opinion is likely to become, the
22 subject of a claim of infringement of a United States patent or copyright
23 or a trade secret, the DDTP shall permit the Network Management
24 Services Provider at its option and expense either to procure the right to
25 continue using the goods or software, or to replace or modify the same so
26 that they become non-infringing. If none of these options can reasonably
27 be taken, or if the use of such goods or software in the provision of
28 services shall be prevented by injunction, the Network Management
29 Services Provider agrees to make every reasonable effort to procure
30 substitute goods or software. If, in the sole opinion of the DDTP, the
31 return of such infringing goods or software makes the continued
32 provision of services under this Agreement impractical, the DDTP shall
33 then have the option of terminating this Agreement, or applicable
34 portions thereof.

35 e.) The contractor shall have no liability to the DDTP under any provision of
36 this clause with respect to any claim of patent, copyright or trade secret
37 infringement which is based upon:

38 i) The combination or utilization of goods furnished hereunder with
39 equipment or devices not made or furnished by the contractor; or,

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- ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
 - iii) The modification by the DDTP of the equipment furnished hereunder or of the software; or
 - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f.) Network Management Services Provider certifies that it has appropriate systems and controls in place to ensure that DDTP allocated funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- h.) The foregoing states the entire liability of the contractor to the DDTP with respect to infringement of patents, copyrights or trade secrets.

37. HEADINGS

The headings used in this Agreement are for the convenience of reference only and not intended, to any extent for any purpose, to limit or define the text of any paragraph herein.

38. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California as applied to contracts formed and wholly performed in California, and enforced in and by the courts in the State of California.

39. NONDISCRIMINATION CLAUSE

- a.) During the performance of this contract, the Network Management Services Provider and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Network Management Services Provider and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Network Management Services Provider and its subcontractors shall comply with the provisions of the

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Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. The Network Management Services Provider and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b.) The Network Management Services Provider shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

40. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

The Network Management Services Provider swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Network Management Services Provider within the immediately preceding two-year period because of the Network Management Services Provider's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

41. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a.) In submitting a bid to the DDTP, the supplier offers and agrees that if the bid is accepted, it will assign to the DDTP all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the DDTP pursuant to the solicitation. Such assignment shall be made and become effective at the time the DDTP tenders final payment to the supplier.
- b.) If the DDTP receives, either through judgement or settlement, a monetary recovery for a cause of action assigned under this chapter, the

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assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the DDTP any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the DDTP as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

c.) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose, and

i.) the assignee has not been injured thereby, or

ii.) the assignee declines to file a court action for the cause of action.

42. DRUG-FREE WORKPLACE CERTIFICATION

The Network Management Services Provider certifies under penalty of perjury under the laws of the State of California that the Network Management Services Provider will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

a.) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violation, as required by Government Code Sections 8335(a).

b.) Establish a Drug-Free Awareness Program as required by Government Code Section 8335(b) to inform employees about all of the following:

i.) the dangers of drug abuse in the workplace;

ii.) the person's or organization's policy of maintaining a drug-free workplace;

iii.) any available counseling, rehabilitation and employee assistance programs; and,

iv.) penalties that may be imposed upon employees for drug abuse violations.

c.) Provide, as required by Government Code Section 8335(c), that every employee who works on the proposed or resulting contract:

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- i.) will receive a copy of the company's drug-free policy statement; and,
- ii.) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

43. FORCED, CONVICT, INDENTURED AND CHILD LABOR

In accordance with PCC Section 6108, Network Management Services Provider warrants that no foreign-made equipment, materials, or supplies used pursuant to this contract are produced in whole or in part by or with the benefit of forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

44. RECYCLING

Network Management Services Provider hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered or produced used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

45. CHILD SUPPORT COMPLIANCE ACT

The Network Management Services Provider acknowledges in accordance with PCC Section 7110, that:

- a.) The Network Management Services Provider recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b.) The Network Management Services Provider, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

46. AMERICANS WITH DISABILITIES ACT

The Network Management Services Provider assures the DDTP that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits

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discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (USC 12101 et seq.)

47. WAIVER

Waiver, whether formal or constructive, by DDTP of strict performance of any provision of this Agreement in any specific instance shall not be deemed a waiver of, nor shall it prejudice DDTP's right to require strict performance of, the same provision or any other provision in the future. The rights and remedies of the DDTP herein are cumulative and are in addition to any other rights or remedies that the DDTP may have in law or equity.

48. TAXES, FEES AND LICENSES

All sales, property, excise and other federal, state and local taxes, licenses or fees, if any, resulting from this Agreement shall be paid by the Network Management Services Provider.

49. MODIFICATIONS TO AGREEMENT

The DDTP may request, at its sole discretion and by written notice, that certain changes be made to the general scope of work without invalidating this Agreement. No changes in the scope of work shall be made by the Network Management Services Provider without the prior written approval of the Executive Director of the DDTP and the authorized representative of the Provider, notwithstanding orders directed by judicial authority, the Federal Communications Commission or the California Public Utilities Commission. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

Upon receipt of any such written request from the Executive Director of the DDTP for a change to the general scope of work, the Network Management Services Provider at Network Management Services Provider's expense shall within a reasonable time thereafter, submit to the DDTP a detailed written price and schedule adjustment to this Agreement. The Network Management Services Provider shall not begin such work prior to DDTP approval of the modification and associated costs. Nothing stated in this section prohibits the Provider from submitting requests for changes to the DDTP Contract Manager, the acceptance or rejection of such an offer shall be at the discretion of the DDTP and subject to approval by the CPUC.

This Agreement and all obligations hereunder are subject to all applicable laws, rules, obligations and orders or rulings of any authorized court, agency or commission of federal or California government. This Agreement is subject to

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changes or modifications that may from time to time be directed by the Federal Communications Commission or the State of California. Any such changes or modifications shall be subject to the procedure set forth in this Agreement.

50. CONFLICTING DOCUMENTS

To the extent, if any, that this Agreement conflicts with the RFP and/or Network Management Services Provider's proposal, this Agreement shall take precedence and control. To the extent, if any, that the RFP and the Network Management Services Provider's proposal conflict, the RFP shall take precedence and control.

51. SAFETY AND ACCIDENT PREVENTION

In performing work under this contract on DDTP or State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the DDTP may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

52. PRIORITY HIRING CONSIDERATIONS

If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

53. YEAR 2000 COMPLIANCE

Contractor warrants that it will provide only Year 2000 compliant products and/or services to the State in all present and future contracts and that Year 2000 compliant products and/or services meet the following requirements:

- a) For information technology goods and/or services, the contractor warrants and represents that the hardware, software and firmware goods and services delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date data with it. This warranty and representation is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or

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remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.

b) For non-information technology goods, the contractor warrants and represents that the goods delivered under this contract are "Year 2000 compliant". For purposes of this contract, a good is Year 2000 compliant if it will continue to function fully before, at and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate and otherwise utilize date information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the contractor.

c) Resellers must obtain written confirmation from the manufacturer that the goods and/or services are Year 2000 compliant, as defined above.

54. INDEMNIFICATION

Provider agrees to indemnify, defend and save harmless the DDTP, the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

55. WARRANTY

Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The DDTP's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.

b) All warranties, including special warranties specified elsewhere herein, shall inure to the DDTP, its successors, assigns, customer agencies and users of the goods or services.

56. ENTIRE AGREEMENT; COUNTERPARTS

This Agreement, incorporating Exhibits A and B, constitutes the entire Agreement between the parties. No other Agreement, statement, or promise relating to the subject matter of this Agreement which is contained herein shall be valid or binding. No changes, alternatives or modifications hereto shall be effective unless in writing and signed by a representative of each party authorized to bind said party. This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which shall constitute one and the same instrument.

57. SIGNATURES

Executed this _____ day of _____, 2002.

For the Deaf and Disabled Telecommunica- Services tions Program:	For the Network Management Provider
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